

Exhibit 1

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*1999 U.S. App. LEXIS 11280, *; 22 E.B.C. 1090*

DONOVAN L. GARBER, Plaintiff-Appellee/Cross-Appellant, v. PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY, Defendant-Appellant/Cross-Appellee.

Nos. 98-3043, 98-3046

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

1999 U.S. App. LEXIS 11280; 22 E.B.C. 1090

May 27, 1999, Filed

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SUBSEQUENT HISTORY: Reported in Table Case Format at: 1999 U.S. App. LEXIS 21114.

PRIOR HISTORY: On Appeal from the United States District Court for the Northern District of Ohio. 96-01766. Dowd, Jr. 12-1-97.

DISPOSITION: Judgment of the district court in favor of Plaintiff and the denial of Plaintiff's attorney's fees affirmed. Denial of prejudgment interest reversed. Case remanded to the district court for an order consistent with this opinion.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant insurer appealed an order of the United States District Court for the Northern District of Ohio, entering judgment for plaintiff, the father of the insured, on plaintiff's action for accidental death benefits under the Employee Retirement Income Security Act, 29 U.S.C.S. § 1001 et seq.


OVERVIEW: The son of plaintiff was approved to use a business flight to pursue a side trip. The son was insured against accidental death under his employer's group policy with defendant insurer. The crash of the airplane killed the son, and defendant refused payment. Plaintiff sued for coverage under the Employee Retirement Income Security Act, 29 U.S.C.S. § 1001 et seq. The district court entered judgment for plaintiff but denied the recovery of attorneys' fees and prejudgment interest. On appeal, the court affirmed the judgment for plaintiff. Defendant abused its discretion in determining that no coverage existed because the policy's language supported the reasonable conclusion that the son was "on business" when he died and was thus covered. The son was not "on vacation" because his official time off had not yet begun when he died. The court affirmed the denial of attorney's fees because defendant did not deny the claim in bad faith. The court also reversed the denial of prejudgment interest because a finding of bad faith was not necessary to award such interest to plaintiff.


OUTCOME: The court affirmed the judgment for plaintiff because the policy could be interpreted as covering plaintiff's son. The court affirmed the denial of attorney's fees as defendant insurer was not guilty of bad faith, reversed the denial of a prejudgment

interest award because defendant's incorrect refusal to pay warranted such an award, and remanded.


CORE TERMS: trip, vacation, prejudgment interest, coverage, travel, flight, fiduciary, policyholder, administrator, deferential, scheduled, discretionary authority, plan administrator, beneficiary, furthering, evening, duty, fly, conflict of interest, abuse-of-discretion, eligibility, heightened, construe, withheld, airport, abandoned, arranged, bonafide, morning, abused


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[Civil Procedure](#) > [Appeals](#) > [Standards of Review](#) > [Clearly Erroneous Review](#) 

HN1  The reviewing court reviews the findings of fact made after a bench trial for clear error. [More Like This Headnote](#)


[Labor & Employment Law](#) > [Employee Retirement Income Security Act \(ERISA\)](#) > [Civil Claims & Remedies](#) 


HN2  A denial of benefits challenged under 29 U.S.C.S. § 1132(a)(1)(B) must be reviewed under a de novo standard unless the benefit plan expressly gives the plan administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the plan's terms, in which cases a deferential standard of review is appropriate. [More Like This Headnote](#)


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HN3  If a benefit plan does give the plan administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the plan's terms, courts review the denial of benefits under the abuse of discretion or arbitrary and capricious standard. A plan administrator's decision is not arbitrary or capricious if it is rational in light of the plan's provisions. [More Like This Headnote](#)


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HN4  Reduced deference to the plan administrator may be appropriate where the fiduciary or administrator has a conflict of interest, among other situations, where claims decisions are made by an insurer who is paying claims out of its own assets. In such cases, a heightened abuse-of-discretion standard is appropriate, which can amount to a "reasonable and correct" or "reasonable and made in good faith" standard. [More Like This Headnote](#)

[Insurance Law](#) > [Claims & Contracts](#) > [Policy Interpretation](#) > [Usual & Ordinary Meaning](#) 

HN5  Where an insurer does not define a term in the policy, the court is left to interpret the term according to its plain meaning, in an ordinary and popular sense. [More Like This Headnote](#)

[Labor & Employment Law](#) > [Employee Retirement Income Security Act \(ERISA\)](#) > [Civil Claims & Remedies](#) 

HN6  In an action to recover benefits under the Employee Retirement Income Security Act (ERISA) by a participant, beneficiary, or fiduciary, under 29 U.S.C.S. § 1132(g) (1), the court in its discretion may allow a reasonable attorney's fee to either party. The district court must consider five factors in deciding whether to award attorney's fees: the degree of the opposing party's culpability or bad faith; the opposing party's ability to satisfy an award of attorney's fees; the deterrent effect of an award on other persons under similar circumstances; whether the party requesting fees sought to confer a common benefit on all participants and beneficiaries of an ERISA plan or resolve significant legal questions regarding ERISA; and the relative merits of the parties' positions. No single factor is determinative. [More Like This Headnote](#)

Labor & Employment Law > Employee Retirement Income Security Act (ERISA) > Civil Claims & Remedies 

HN7 Generally, the beneficiaries of pension plans have a right to prejudgment interest on benefits wrongly withheld. To be "wrongful," payments need not have been withheld in bad faith. It is sufficient that they were incorrectly withheld. Awards of prejudgment interest are compensatory, not punitive, and a finding of wrongdoing by the defendant is not a prerequisite to such an award. [More Like This Headnote](#)

COUNSEL: For DONOVAN L. GARBER, Plaintiff - Appellee, Cross-Appellant (98-3043, 98-3046): Marshall I. Nurenberg, Kathleen J. St. John, Nurenberg, Plevin, Heller & McCarthy, Cleveland, OH.

For PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY, Defendant - Appellant, Cross-Appellee (98-3043, 98-3046): Robert D. Anderle, Porter, Wright, Morris & Arthur, Cleveland, OH.

For PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY, Defendant - Appellant, Cross-Appellee (98-3043, 98-3046): Joseph M. Rimac, Bannan, Green, Smith, Frank & Rimac, **[*2]** San Francisco, CA.

JUDGES: Before: BOGGS, CLAY, and GODBOLD, * Circuit Judges.

* The Honorable John C. Godbold, United States Circuit Judge for the Eleventh Circuit, sitting by designation.

OPINION: PER CURIAM. Plaintiff's son, Dr. David Garber, an engineer for Northrop Grumman Corporation in California, flew to Chicago on business. With Northrop's permission, he scheduled his return flight to California through Pittsburgh and Akron-Canton, to allow a surprise weekend visit with his parents in Canton, Ohio. He was insured for \$ 300,000 against accidental death while travelling on business under Northrop's group travel accident insurance, issued by Provident Life and Accident Insurance Company. Garber was killed when his flight from Chicago to Pittsburgh crashed near the Pittsburgh airport. A.C. Newman and Company, the claims administrator for Provident, declined to pay Garber's accidental death benefits. Plaintiff, the named beneficiary under the travel insurance policy, appealed the decision. Provident, as claims review fiduciary, reviewed the decision and again denied payment. Plaintiff sued Provident in district court under the Employee Retirement Income Security Act ("ERISA"), **[*3]** 29 U.S.C. § 1001 *et seq.* Following a bench trial, the district court held that Provident acted arbitrarily and capriciously in reading the policy to exclude coverage, and entered a \$ 300,000 judgment for Plaintiff. Provident appeals the judgment of the district court. Plaintiff cross-appeals the denial of attorney's fees and pre-judgment interest. We affirm the judgment for Plaintiff and the denial of attorney's fees, and reverse the denial of prejudgment interest.

I

Garber was covered by "Hazard 12" of the Provident policy, "24-Hour All Risk Accident Protection--Business Only," which provides in pertinent part that:

Coverage will apply to any injury sustained by an Employee when on Business for the Policyholder during any bonafide trip.

Coverage for such trip begins on the later of when an Employee leaves his or her

place of residence or place of regular employment for the purpose of going on such trip.

Coverage ends on the earlier of when an Employee returns to his or her place of residence or place of regular employment.

. . . .

Definition

The term "when on Business for the Policyholder" means furthering the business of the policyholder. This does not include [*4] an injury sustained during the course of travel to and from work, leave of absence or vacation.

On Wednesday, September 7, 1994, Garber and several other Northrop employees flew from California to Chicago to attend a business conference scheduled for Thursday, September 8. Northrop arranged for two nights of lodging in Chicago, September 7 and 8. The group was scheduled to fly back to California on Friday, September 9. Before leaving California, Garber arranged instead to fly from Chicago to Ohio on Friday, visit his parents over the weekend, and return to California on Sunday, September 11. Northrop approved Garber's plan, which actually saved the company \$ 107.40 in air fare. Knowing that Garber was going to depart Chicago for Ohio at 7:44 a.m. on Friday, September 9, Northrop intended to charge him only one-half day of vacation on Friday.

The conference ended earlier than expected on Thursday, so, rather than stay overnight in Chicago, Garber arranged to fly through Pittsburgh to Akron-Canton on Thursday evening, September 8. Garber's flight to Pittsburgh, US Air flight 427, crashed near the Pittsburgh airport at approximately 7:00 p.m. that evening. Affidavits from Northrop [*5] headquarters employees one year later state that (1) "from the point he left the conference meetings in Chicago, [Garber] was on personal time," not company time; (2) because the conference ended early, the employees "were expected to fly back to Los Angeles Thursday night after work hours and to be back at their desks Friday morning;" and (3) having left Chicago on Thursday evening, Garber would have been charged for a full day of vacation on Friday, September 9. The record does not indicate whether Garber's colleagues in fact returned to California on Thursday or waited for their scheduled flights on Friday.

As the claims administrators for Provident, Newman received a series of documents from Northrop concerning Garber, the travel insurance policy, and a separate employer-related life insurance policy (not at issue in this case). The proof-of-death form submitted by Northrop for the life insurance policy stated that Garber had died "off duty." The district court found as a matter of fact that the "distinction between whether Dr. Garber was on duty or off duty at the time of his death has no relevance" to the travel policy.

II

HN1 We review the findings of fact made after [*6] a bench trial for clear error, and the court's legal conclusions *de novo*. *Davies v. Centennial Life Ins. Co.*, 128 F.3d 934, 938 (6th Cir. 1997). HN2 "[A] denial of benefits challenged under [29 U.S.C.] § 1132(a)(1)(B) must be reviewed under a *de novo* standard unless the benefit plan expressly gives the plan administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the plan's terms, in which cases a deferential standard of review is appropriate." *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 102, 103 L. Ed. 2d 80, 109 S. Ct. 948 (1989). HN3 If the plan does give the plan administrator or fiduciary discretionary authority

to determine eligibility for benefits or to construe the plan's terms, courts review the denial benefits under the "abuse of discretion" or "arbitrary and capricious" standard. *Miller v. Metropolitan Life Ins. Co.*, 925 F.2d 979, 983 (6th Cir. 1991). A plan administrator's decision is not arbitrary or capricious if it is rational in light of the plan's provisions. See *id.* at 984; *Daniel v. Eaton Corp.*, 839 F.2d 263, 267 (6th Cir 1988).

A. Insurance Coverage

The travel policy provides that "the party hearing the appeal [*7] has the discretionary authority to interpret the Plan and the Policy and to determine eligibility for benefits." The district court was correct that this clear grant of discretionary authority requires that the decision of the fiduciary be reviewed under the deferential "abuse of discretion" standard. ^{HN4} Reduced deference may be appropriate where the fiduciary or administrator has a conflict of interest--among other situations, where "claims decisions are made by an insurer who is paying claims out of its own assets." JAMES F. JORDEN, ET AL., HANDBOOK ON ERISA LITIGATION § 4.04[C] at 4--44 (1992); see *Brown v. Blue Cross and Blue Shield of Alabama*, 898 F.2d 1556 (11th Cir. 1990); *Miller v. Metropolitan Life Ins. Co.*, 925 F.2d 979, 984--85 (6th Cir. 1991) (considering the insurance company's conflict of interest in its analysis). In such cases, a "heightened" abuse-of-discretion standard is appropriate, which can amount to a "reasonable and correct" or "reasonable and made in good faith" standard. See JORDEN, *supra*, *ibid.*

The district court rejected Plaintiff's argument that a "heightened" abuse-of-discretion standard should be used, on the ground that Newman, the plan [*8] administrator, had no conflict of interest. The district court, therefore, reached its decision to overturn the decision of the plan fiduciary even though it applied the most deferential standard available.

Full deference may not be appropriate in the case before this court. According to the record on appeal, Plaintiff first heard from Newman, the plan administrator, in a letter from Charles Beach, executive vice president of Newman, dated November 30, 1994. This letter indicates that "should the Provident need more time to conduct its investigation and/or to arrive at its claims decision, we will certainly keep you informed." n1 (Emphasis added). The initial denial of payment was communicated in Beach's next letter, dated December 14, 1994. Beach's third communication, dated March 9, 1995, "acknowledged Plaintiff's appeal of Provident's initial decision to deny this claim." (Emphasis added). The appeal was denied in a letter from Beach dated April 11, 1995, which stated: "you appealed Provident's initial decision The claims review fiduciary [i.e., Provident] has now thoroughly reviewed the matter on appeal . . . Provident renders its decision after appeal [*9] as follows." (Emphasis added). According to Beach's letters, it appears that Provident made both decisions. If so, a "heightened abuse-of-discretion" standard of review would be appropriate. We need not decide which standard to apply because we agree with the district court that, even giving Provident the full benefit of the deferential standard, its decision must be reversed.

- - - - - Footnotes - - - - -

n1 The logo on A.C. Newman's stationery identifies the company as "insurance correspondents."

- - - - - End Footnotes - - - - -

Provident invited the problem at issue here with poor draftsmanship. Hazard 12 is written as broad, portal-to-portal business-trip accident coverage with restrictions that appear to be afterthoughts tacked on at the end. Plainly, the drafters did not contemplate (certainly, they did not clearly articulate) the possibility of side trips during a business trip. Provident would

have this court interpret the "when on business" clause very restrictively.

This type of interpretation has some support in the text of the policy. The opening paragraph of [*10] Hazard 12 states that "coverage will apply to any injury sustained by an Employee *when* on Business for the Policyholder *during* any bonafide trip." (Emphasis added). Hazard 12 defines "when on Business for the Policyholder" to mean "[while] furthering the business of the policyholder," and excludes injuries sustained during the course of travel to and from work, leave of absence or vacation. "*When* on business *during* a trip" seems to allow for the possibility that there are times when one is *not* "on business" during a bonafide business trip. "Furthering the business of the policyholder" is not difficult to understand, nor is it facially ambiguous. An employee is "furthering the business" of the policyholder when he is doing what his employer sent him to do.

Presumably, however, any interpretation that parses a workday into time "on business" and time "not on business" must make allowances for certain digressions--daydreaming during a conference presentation, visiting the restroom, running out to the parking lot to roll the windows of the rental car up, a brief personal phone call in the middle of the afternoon, stopping at a bookstore after lunch, eating supper, [*11] and sleeping, to name just a few. The question is whether the language in Hazard 12, together with common intuition, can make a distinction between these digressions and Garber's flight to Pittsburgh. The difficulty is the fineness of the line that must be drawn. What if, for example, instead of travelling away from California and returning two or three days later than his colleagues, Garber simply scheduled a layover flight rather than a direct flight to give himself an hour to meet a friend for drinks at the Denver airport? We hold that any interpretation of the policy that requires such a fine line to be drawn is not a reasonable interpretation. On any reasonable interpretation of the language in Northrop's policy, an employee is generally "on business" if he started a business trip and has not returned to his home or workplace--just as the "coverage . . . begins" and "coverage ends" language of the policy clearly states.

Alternatively, Provident argues that Garber is specifically excluded from coverage if he was on vacation or leave at the time of the crash. ^{HN5} Provident did not define either of these terms in the policy, so this court is left to interpret the terms of the policy [*12] "according to their plain meaning, in an ordinary and popular sense." *Perez v. Aetna Life Ins. Co.*, 150 F.3d 550, 556 (6th Cir. 1998) (*en banc*). The district court properly found that the ordinary and popular sense of "vacation" does not include Garber's Thursday-evening flight. Further, the district court correctly concluded that neither the travel authority form nor the statements that Garber was "off duty" are relevant to the determination of whether he was on vacation.

An employee might abandon a business trip before returning home--for example, to spend a week skiing in Europe--in which case the vacation exclusion would cancel the business travel coverage, at least until the employee resumed his travel home from the location at which he abandoned the business trip. But that is not this case. Had he reached Canton, Garber might have abandoned the business trip for the day or two that he would have been visiting his parents, and he might have been on vacation. But his vacation could not have started until his official time off began on Friday morning. Garber had not abandoned the business trip at 7:00 Thursday evening.

Because (1) the language of the policy cannot credibly [*13] draw the fine distinction necessary between an employee's "on business" and "not on business" time while he is on a business trip, (2) the plain meaning of "vacation" does not cover the travel portion Garber's side trip, certainly not until his official time off began on Friday morning, and (3) the vague and ambiguous language used by Provident is not a reasonable way to restrict a broad, portal-to-portal business travel provision, the district court was correct to conclude that Provident's determination denying coverage was unreasonable. Even by the very deferential standard employed by the district court, Plaintiff is entitled to prevail. The judgment of the

district court in favor of Plaintiff is AFFIRMED.

B. Attorney's Fees

^{HNG}¶ In an action to recover ERISA benefits by a participant, beneficiary, or fiduciary, "the court in its discretion may allow a reasonable attorney's fee . . . to either party." 29 U.S.C. § 1132(g)(1). This Circuit requires the district court to consider five factors in deciding whether to award attorney's fees: (1) the degree of the opposing party's culpability or bad faith; (2) the opposing party's ability to satisfy an award of attorney's fees; **[*14]** (3) the deterrent effect of an award on other persons under similar circumstances; (4) whether the party requesting fees sought to confer a common benefit on all participants and beneficiaries of an ERISA plan or resolve significant legal questions regarding ERISA; and (5) the relative merits of the parties' positions. *Schwartz v. Gregori*, 160 F.3d 1116, 1119 (6th Cir. 1998) (citing *Secretary of Dep't of Labor v. King*, 775 F.2d 666, 669 (6th Cir. 1985)). No single factor is determinative. *Ibid.* (citing *Wells v. United States Steel*, 76 F.3d 731, 736 (6th Cir. 1996)).

Plaintiff argues that the district court abused its discretion by not recognizing Provident's bad faith in denying the claim. However, the district court held merely that Provident's interpretation of the contract was *unreasonable*, not that Provident acted in bad faith. The court specifically stated that "there is an absence of bad faith" and refused to declare that there was no basis for Provident's position. We agree with the district court that Provident's claims were neither frivolous nor pursued in bad faith.

Second, Plaintiff argues that awarding attorney's fees

will send a message to **[*15]** insurance companies and their designated claims administrators that just because courts have interpreted ERISA to permit the drafters of ERISA plans to claim for themselves broad interpretative discretion does not mean that they can draft mystifying policy language then conveniently construe it to involve hidden limitations nowhere expressed on the policy's face.

Br. of Plaintiff-Appellee/Cross-Appellant at 35. That may be so, although there seem to be other, market forces that are better suited to ensure this. n2 There is no evidence that Provident intentionally drafted the Hazard 12 coverage in such a way that it could later capitalize on its obfuscation. The district court was correct that this case is unique and that no general deterrence would be served by awarding attorney's fees.

- - - - - Footnotes - - - - -

n2 In the words of Sam Goldwyn, "If you want to send a message, use Western Union."

- - - - - End Footnotes - - - - -

Finally, Plaintiff argues that this case resolves a significant legal question involving ERISA, holding that side trips are not vacations. **[*16]** But this is not a legal issue involving -it is simply a decision interpreting specific, badly-drafted policy language. Again, Plaintiff has not shown that the district court abused its discretion.

The district court's decision denying attorney's fees is AFFIRMED.

C. Prejudgment Interest

Plaintiff argues that he should receive prejudgment interest because, under *Wells v. United States Steel & Carnegie Pension Fund*, 76 F.3d 731, 737 (6th Cir. 1996), the claim was liquidated and Provident wrongfully withheld payment. The district court held that Provident did not act in bad faith and was, therefore, not liable for prejudgment interest.

Plaintiff's claim involves a fixed and agreed insurance benefit, a paradigm of liquidated damages. ^{HN7} "Generally, the beneficiaries of pension plans have a right to prejudgment interest on benefits wrongly withheld." *Wells*, 76 F.3d at 737. To be "wrongful" under *Wells*, payments need not have been withheld in bad faith. It is sufficient that they were *incorrectly* withheld. "Awards of prejudgment interest are compensatory, not punitive, and a finding of wrongdoing by the defendant is not a prerequisite to such an award." [*17] *Id.* at 738 (quoting *Tiemeyer v. Community Mut. Ins. Co.*, 8 F.3d 1094, 1102 (6th Cir.), *cert. denied*, 511 U.S. 1005, 128 L. Ed. 2d 48, 114 S. Ct. 1371 (1993) (quoting *Drennan v. General Motors Corp.*, 977 F.2d 246, 253 (6th Cir. 1992), *cert. denied*, 508 U.S. 940, 124 L. Ed. 2d 639, 113 S. Ct. 2416 (1993))). Because of the "general ERISA policy favoring awards of prejudgment interest to plaintiffs when a pension fund wrongfully withholds benefits," 76 F.3d at 737, and the fact that bad faith is not a prerequisite to the recovery of prejudgment interest, we hold that the district court applied incorrect law to Plaintiff's prejudgment interest claim and, therefore, abused its discretion. We REVERSE the decision of the district court in this respect.

III

The judgment of the district court in favor of Plaintiff and the denial of Plaintiff's attorney's fees are affirmed. The denial of prejudgment interest is reversed. The case is remanded to the district court for an order consistent with this opinion.

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Exhibit 2

T H E O H I O S T A T E B A R A S S O C I A T I O N



Fall 2001

On behalf of the Solo, Small Firm & General Practice Section of the Ohio State Bar Association, we are pleased to present the findings of the **2001 Economics of Law Practice Survey** conducted in the Second Quarter of this year. The data was then analyzed and collated over the summer.

2001
Desktop
Reference
on the
Economics
of Law
Practice
in Ohio

The **2001 Desktop Reference on the Economics of Law Practice in Ohio** is designed to consolidate survey findings in a convenient and usable format. This is a unique document—one which you will be able to refer to with confidence in the future. Whether you are a sole practitioner or a principal in a large firm, and regardless of the geographic location of your practice, this Reference provides the most timely data on the economics of law practice in Ohio and the fiscal state of attorneys statewide.

We thank the willingness of the hundreds of Ohio Attorneys to “get involved” by responding to the Survey Request they received this past spring. Their prompt, candid responses have allowed the database to be credible for your reference use.

To obtain additional copies of this valuable Practice Reference Source, contact the Ohio State Bar Association, P.O. Box 16562, Columbus, Ohio 43216-6562 at 1-800-282-6556. The cost of the Reference Survey is \$25.00 to members of the Solo, Small Firm and General Practice Section and \$40.00 to all others.

For assistance in interpreting the information presented, you may contact Dr. Lawrence Stiffman of the Applied Statistics Laboratory in Ann Arbor, Michigan at (734) 996-0262 or by e-mail: aslinfo@aol.com.

Thomas Letson, Jr.
Chair
Solo, Small Firm and General Practice Section
Ohio State Bar Association

INTRODUCTION

Objectives

This past spring, the Survey Subcommittee of the Solo, Small Firm and General Practice Section of the Ohio State Bar Association fielded the fourth state wide legal economics poll of the OSBA membership. An initial survey, conducted in 1990, provided baseline information, followed by updates in 1994 and 1998. The objective of the 2001 survey is to observe changes on the relative status of its members' hourly billing rates and practices, incomes, law office overhead and management practices, and work week time allocations.

The following elements of the legal services marketplace are included:

- Current membership demographics and geographic distribution
- Sentiment on trends in the supply of, and demand for, legal services
- Attorney net income arrayed by tenure, specialization, occupation, location, firm size, gender and work style
- Prevailing hourly billing rates for attorneys and legal assistants
- Allocation of hours in the average work week
- Compensation to associates, legal assistants and secretaries by experience
- Other overhead expenses and practice management indicators
- Use of office automation products and services

When compared across the state's regional markets and over time, this information assists Ohio attorneys in developing their professional activities to provide more effective and efficient legal services.

The Solo, Small Firm and General Practice Section receives many requests from attorneys for help in establishing assigned counsel fees, and for help in cases involving judicial determination of attorney fees. This report has been prepared to also address these requests and to consolidate the most recently available data in useful and usable formats.

Methods

A 37-question confidential survey instrument was mailed during May and June 2001 to a stratified random sample of 6,486 active, in-state Ohio State Bar Association (hereinafter OSBA) members and to all members of the Solo, Small Firm and General Practice Section. A proportionate representation of members was thus obtained covering all urban, suburban and rural areas throughout Ohio.

The Applied Statistics Laboratory (ASL), of Ann Arbor, Michigan, received and tabulated about 900 responses suitable for analysis and publication in this Report. These returns represent a response rate of 12% (which is consistent with similar studies throughout the country). All returned questionnaires are maintained at the ASL offices while the raw data is resident on computer (SPSS) files maintained by ASL. As the survey was confidential, no identification of respondents was obtained or retained. All exhibits in this Report present aggregated data to further assure respondent confidentiality.

A Review of Statistical Terms

To help interpret the information in this report, here is a brief discussion of measures of central tendency (median and mean) and measures of dispersion or spread (percentiles and ranges).

Introduction

Measures of Central Tendency

The mean (also called the average or arithmetic average) is calculated by adding the values of all responses, then dividing by the number of responses.

Example: Three responses — 3, 1, and 2 — are reported. The average is calculated by adding their values ($1 + 2 + 3 = 6$), then dividing by the number of responses (3). Thus, the average value for this distribution of responses is $6 \div 3 = 2$.

The median is the middle value of a series (distribution) of values which is initially rank-ordered (from low to high, or vice-versa). By definition, half the values are greater and half are less than the median. Another term for the median is the 50th percentile.

Example: Three responses — 30, 1, and 2 — are reported. The median is the middle number in the order of distribution (1, 2, 30) or 2. The average or mean value of this distribution is $33 \div 3 = 11$. Use of the median as a statistic for central tendency reduces the effect of "outliers" (extremely high or low values, such as 30), while the average does not.

Median and mean values are utilized throughout this report to measure central tendency.

Measures of Dispersion

The median, as stated above, represents the middle value of a distribution of responses. It is also termed the 50th percentile. Three additional percentile values are used to reveal dispersion of a particular series (distribution) of values. These are the:

- 25th percentile (also called the lower quartile). One-fourth of the values is less and three-fourths are more than this value.
- 75th percentile (also called the upper quartile). Three-fourths of the values are less and one-fourth is more than this value.
- 95th percentile (also called the upper quartile). Ninety-five percent of the values are less and five percent are more than this value.

Economic Regions Defined

Sixteen geographic areas were included on the questionnaire to denote office location. Some exhibits in this Report include all sixteen areas, while most display fewer, collapsed regions to maintain a reasonable number of observations for reporting findings. Regions are defined as follows:



Region	Geographic Areas included
Greater Cleveland	Downtown only/Suburban (Cuyahoga County)
Greater Cincinnati	Downtown only/Suburban areas
Greater Columbus	Downtown only/Suburban areas
Dayton	
Northeast Region	Canton, Akron, Youngstown and northeastern cities
Northwest Region	Toledo and northwestern cities
Southern Region	Includes Southeast, Southwest and Central Regions excluding cities named above

Introduction

Interpretation of Findings

Caution should be exercised interpreting data when only a small number of responses are available. This is due to the strong influence of a few "outliers" which might distort reality. In such cases, readers are advised to "group up" to a larger geographic area or job classification, where appropriate.

Personnel planning and decision-making include many personal factors not covered in surveys of this scope, nature or intent. However, this Report provides as wide a range of values as possible which can help in initiating sound and equitable compensation and budgeting policies.

Sentiment on Economic Conditions

The economic circumstances surrounding the practice of law can be perceived against the past and the future. "Economic sentiment" perceptions provide insight as "leading indicators" on the future performance of the economy or an industry, such as legal services. Appendices H-K provide a full array of perceptions on the supply and demand of legal services and on current economic conditions compared with 2000 and expected in 2002.

Most respondents (57%) perceive no changes in economic conditions between 2000 and 2001, increasing to 61% who perceive no change in 2002. Attorneys are more optimistic about next year's economic climate than last year's. About 17% feel current conditions are better compared with 2000 and 19% feel that conditions will be better in 2002 than in 2001. While 26% of all respondents feel economic circumstances this year are worse than last year, only 20% feel next year's economic conditions will be worse.

About 47% of respondents feel there are too many lawyers in the community in which they practice. Reported demand for legal services partially reflects this over supply as 15% of respondents report having insufficient workloads to keep busy. However, 59% report that the quantity of their legal work is "all they can handle," and 27% report "having more work than they prefer." By comparison, in 1998, 57% reported too many lawyers in their community and 13% reported insufficient workloads to keep busy.

Refer to Appendices H-K for distributions of these sentiment indicators by respondents' office location, years in practice, practice classification and organization size.

2000 NET INCOME OF OSBA ATTORNEYS

Introduction

While many factors interact to influence the level of attorney income, clues to explain variation can be derived from analyzing seven factors addressed in this survey, including:

- Legal occupation or practice classification
- Specialization
- Tenure (years in practice)
- Size of firm or organization (measured by number of attorneys) and workstyle habits full- vs. part-time
- Office location (geographic area where law office is located)
- Gender and work style habits (full- versus part-time work status)

Each factor is discussed in the remainder of this Section. Net income is defined on the questionnaire as "net income before taxes derived from all legal work." Reported incomes reflect 2000, 1997 and 1993 and values as the surveys were fielded in the spring and summer of 2001, 1998 and 1994 respectively.

Legal Occupation

Exhibit 1 summarizes 2000 net income of attorneys by 11 legal occupation or practice classifications. As discussed previously, this and subsequent exhibits providing distribution data offer five values—the average, and the 25th, 50th (Median), 75th and 95th percentiles.

For example, 25% of all house counsel earn \$56,750 or less; half earn less than \$90,000, while half earn more than \$90,000, and 25% earn more than \$136,250, and 5% earn more than \$301,400. Average net income reported by house counsel was \$112,673.

The 2000 median net income for all OSBA respondent attorneys (hereinafter OSBA attorneys or attorneys) is \$75,000 which is 15.4% higher than the 1997 reported level of \$65,000. The average annual rate of increase over this eight year period is 5% which is at or slightly above the average annual inflation rate (for urban wage earners) during the same period.

Exhibit 2 reveals income clustering among ten occupational categories. Not surprisingly, while incomes do cluster when legal occupation is considered, there is still a large spread among the categories reflecting many different forms and styles of practice.

Attorney Net Income

Exhibit 1 2000 Net Income by Legal Classification, OSBA Attorneys

Legal Classification	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
Sole practitioner	243	\$30,000	\$54,500	\$74,097	\$101,500	\$215,600
Sole practitioner with 1 or more associates	44	59,500	100,000	141,750	148,125	487,500
Sole practitioner sharing space	65	41,750	71,500	85,828	105,500	525,000
Partner in firm with 2-7 partners	160	66,250	100,000	121,959	137,750	319,200
Partner in firm with 8 or more partners	85	111,500	175,000	203,405	255,000	590,000
Associate in firm with 2-7 partners	63	42,000	52,000	61,651	70,000	191,200
Associate in firm with 8 or more partners	61	58,750	70,000	80,402	93,500	128,750
Judge	17	57,333	70,000	74,426	100,000	103,000
City/State/County government	57	37,875	50,000	53,607	69,250	88,800
House Counsel	61	56,750	90,000	112,673	136,250	301,400
Counsel with legal aid/legal service agency	17	39,500	45,000	49,353	70,000	80,000
All attorneys	892	\$45,000	\$75,000	\$99,247	\$120,000	\$274,667

Exhibit 2 Percent Distributions of 2000 Net Income by Legal Occupation, OSBA Attorneys

Net Income (\$)	All Attorneys	Sole Pract.	Sole Pract. w/Assoc.	Space Sharer	Assoc. w/ 2-7 Part.	Assoc. w/ 8+ Part.	Partner w/ 2-7 Part.	Partner w/ 8+ Part.	House Counsel	City/State Gov't.	Legal Aid
less than \$30,000	11.2	26.2	6.8	17.2	1.6	—	7.9	—	—	—	5.9
30,000-45,999	14.5	15.9	9.1	12.5	39.3	7.1	6.0	—	5.5	39.3	52.9
46,000-55,999	9.3	9.0	—	—	19.7	14.3	3.3	—	16.4	23.2	11.8
56,000-65,999	8.7	4.7	13.6	10.9	13.1	17.9	7.9	—	10.9	7.1	11.8
66,000-75,999	8.3	7.7	—	17.2	6.6	10.7	6.6	—	9.1	14.3	11.8
76,000-85,999	8.1	6.9	6.8	7.8	4.9	21.4	10.6	—	5.5	5.4	5.9
86,000-95,999	3.6	1.7	6.8	—	—	7.1	4.0	—	7.3	—	—
96,000-115,999	10.6	6.9	11.4	10.9	—	12.5	17.9	12.7	14.5	—	—
116,000-135,999	7.0	8.2	11.4	6.3	—	—	11.3	6.3	7.3	—	—
136,000-155,999	5.0	4.3	11.4	4.7	—	—	6.6	8.9	9.1	—	—
156,000-175,999	2.7	1.7	—	—	—	—	2.6	10.1	—	—	—
176,000-199,999	1.3	1.7	—	—	—	—	—	5.1	9.0	—	—
200,000-249,999	3.4	—	—	—	—	—	4.6	17.7	—	—	—
250,000-299,999	2.4	2.1	—	—	—	—	—	11.4	—	—	—
300,000 or more	4.0	1.7	11.4	—	—	—	6.6	13.9	—	—	—
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Attorney Net Income

Legal Specialization

Attorneys were asked to select from a list of various fields of law which provided their highest source of income during 2000. Exhibit 3 distributes 2000 net incomes of 892 respondents by the primary field of law generating the most income. Exhibit 4 considers the subset (N=721) of "private practitioners only." The 2000 median net income of private practitioners is 6.7% higher than net income of all attorneys.

Exhibit 3 **2000 Net Income by Primary Field of Law, OSBA Attorneys**

Primary Field of Law	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
Administrative Law	8	\$80,500	\$100,500	\$174,000	\$229,500	\$600,000
Bankruptcy	24	49,750	90,250	110,833	181,250	295,000
Collections	22	38,000	52,000	75,127	130,000	286,500
Corporate/Business Law	72	44,500	100,000	109,731	151,500	350,000
Criminal (Public Defendant)	19	31,250	44,000	47,408	65,000	140,000
Criminal (Private Defendant)	16	61,000	90,000	105,133	191,500	318,000
Criminal (Prosecutor)	17	40,000	60,000	60,941	94,000	100,000
Domestic Relations (Family Law)	81	29,000	49,333	59,398	78,000	195,000
Environmental/Natural Resources Law	7	73,750	148,000	111,500	169,250	173,000
General Practice	35	39,750	59,500	60,219	79,500	142,150
Health and Hospital Law	11	60,000	102,000	174,222	304,500	500,000
Intellectual Property	11	57,500	125,000	120,091	258,000	306,000
Labor Law (Defendant)	24	58,750	82,750	116,250	186,750	392,250
Labor Law (Plaintiff)	12	44,500	69,500	182,000	664,750	1,054,000
Municipal/Public Entity Law	17	68,000	82,000	93,441	115,000	235,000
Product Liability	6	85,500	133,500	124,500	170,000	242,000
Personal Injury (Defendant)	36	65,000	106,667	138,743	150,500	532,000
Personal Injury (Plaintiff)	63	74,750	117,500	154,733	175,000	955,000
Real Property Law	61	43,500	79,167	93,580	121,250	215,600
Securities Law	5	53,000	125,000	95,500	182,500	240,000
Taxation	18	52,500	100,000	150,733	272,500	700,000
Trial Practice (General Civil)	38	49,167	75,000	106,371	137,500	392,000
Trial Practice (Commercial)	17	45,000	83,000	87,941	120,000	300,000
Wills/Estates/Probate	162	42,875	70,000	85,450	112,250	256,250
Workers' Compensation	22	45,500	87,250	94,909	146,000	243,500
Other Fields of Law	57	46,667	75,000	94,792	130,000	244,400
All Private Practitioners	892	\$45,000	\$75,000	\$99,247	\$120,000	\$274,667

Attorney Net Income

Exhibit 4

2000 Net Income by Primary Field of Law, OSBA Private Practitioners Only

Primary Field of Law	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
Bankruptcy	23	\$52,000	\$93,500	\$113,522	\$187,500	\$296,000
Collections	18	38,000	60,000	82,215	133,000	300,000
Corporate/Business Law	59	41,500	94,000	102,309	146,500	252,000
Criminal (Public Defendant)	12	28,000	38,500	35,167	51,250	70,000
Criminal (Private Defendant)	12	74,500	104,000	128,727	259,000	318,000
Domestic Relations (Family Law)	68	25,000	51,500	61,488	80,250	226,100
Environmental/Natural Resources Law	4	75,000	170,500	117,750	171,750	173,000
General Practice	31	35,875	60,500	61,679	81,250	159,950
Health and Hospital Law	6	102,000	334,000	262,200	417,000	500,000
Intellectual Property	9	60,000	170,000	126,778	205,000	306,000
Labor Law (Defendant)	17	75,000	108,000	132,853	200,000	405,000
Labor Law (Plaintiff)	12	44,500	69,500	182,000	664,750	1,054,000
Municipal/Public Entity Law	11	79,000	110,000	107,455	192,500	235,000
Product Liability	5	82,000	121,000	120,200	181,500	242,000
Personal Injury (Defendant)	31	81,500	110,000	147,548	158,000	574,000
Personal Injury (Plaintiff)	62	74,750	117,500	154,733	175,000	955,000
Real Property Law	52	41,000	76,667	91,330	117,500	242,000
Taxation	12	57,500	174,000	189,300	593,750	700,000
Trial Practice (General Civil)	33	53,875	89,500	116,733	147,917	419,500
Trial Practice (Commercial)	16	44,583	84,500	90,000	133,750	300,000
Wills/Estates/Probate	152	43,750	71,500	86,947	120,250	195,750
Workers' Compensation	21	44,000	87,500	95,476	148,000	245,700
Other Fields of Law	37	48,750	80,000	105,086	162,500	271,000
All Private Practitioners	721	\$45,000	\$80,000	\$104,277	\$125,125	\$287,250

Attorney Net Income

Years in Practice

Exhibits 5 and 6 relate reported 2000 net income to the number of years in practice for all attorneys and for private practitioners. Income is directly correlated with experience. Exhibit 7 displays median 2000 net income for 11 legal occupations by years in practice.

Exhibit 5 **2000 Net Income by Years in Practice, OSBA Attorneys**

Years in Practice	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
5 or less	145	\$35,417	\$47,000	\$52,779	\$65,750	\$108,250
6-10	96	45,000	64,500	71,797	97,250	169,591
11-15	107	49,750	77,250	91,992	108,750	297,583
16-25	264	51,308	89,500	118,884	146,125	351,050
more than 25	274	51,833	90,000	117,874	139,833	320,900
All Attorneys	892	\$45,000	\$75,000	\$99,247	\$120,000	\$274,667

Exhibit 6 **2000 Net Income by Years in Practice, OSBA Private Practitioners Only**

Years in Practice	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
Years in Practice						
5 or less	105	\$37,500	\$51,000	\$55,165	\$72,375	\$109,700
6-10	72	43,000	66,000	74,875	102,000	204,618
11-15	79	46,500	80,000	97,813	119,125	320,750
16-25	216	50,100	99,333	123,588	152,000	353,800
more than 25	245	50,375	90,000	118,693	143,500	328,500
All Private Practitioners	721	\$45,000	\$80,000	\$104,277	\$125,125	\$287,250

Exhibit 7 **2000 Median Net Income by Years in Practice and Legal Occupation, OSBA Attorneys**

Years in Practice	Sole Pract.	Sole Pract. w/Assoc.	Space Sharer	Part. w/ 2-7 Part.	Part. w/ 8+ Part.	Assoc. w/ 2-7 Part.	Assoc. w/ 8+ Part.	Judge	Local Gov't.	House Counsel	Legal Aid
5 or less	\$25,000	—	\$41,000	\$50,000	—	\$48,000	\$63,000	—	\$37,000	\$55,000	\$39,000
6-10	45,000	83,500	75,000	61,500	—	62,000	74,000	—	51,500	71,000	—
11-15	47,000	129,000	69,500	90,000	120,000	37,800	80,000	—	50,000	94,000	—
16-25	59,000	100,000	70,000	110,000	220,000	70,000	—	94,500	67,000	140,000	70,000
more than 25	69,000	93,500	79,500	100,000	163,000	—	81,500	97,250	64,000	125,000	—
All Attorneys	\$54,000	\$100,000	\$71,500	\$100,000	\$175,000	\$52,000	\$70,000	\$70,000	\$50,000	\$90,000	\$45,000

Attorney Net Income

**Size of Firm or Organization
and Work Status
(Full- vs. Part-Time)**

Exhibits 8 and 9 display 2000 net income for all attorneys and private practitioners by organization size (measured as the total number of attorneys reported in the firm or organization). The larger the organization, the higher the net income reported. Associate income clusters around the 25% percentile value and partner income around the higher percentile values for any given size category. Refer to Exhibit 23 for associate salaries by firm size category.

Exhibit 8

**2000 Net Income by Size of Firm or Organization,
OSBA Attorneys**

Size of Organization (# of Attorneys)	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
1	263	\$31,500	\$58,667	\$73,814	\$100,000	\$192,000
2-5	235	45,500	75,000	101,006	119,833	300,000
6-20	157	52,750	81,000	114,172	129,750	300,900
more than 20	157	66,250	94,333	139,648	174,125	478,750
All Attorneys	892	45,000	75,000	99,247	120,000	274,667
Full-Time Only						
1	218	\$40,000	\$69,000	\$83,458	\$110,000	\$204,200
2-5	218	49,500	76,500	102,893	121,725	300,000
6-20	149	53,250	84,250	116,428	135,250	303,300
more than 20	152	68,250	95,500	140,572	174,125	479,750
All Full-Time Attorneys	799	\$50,000	\$79,833	\$104,999	\$124,500	\$275,500

Exhibit 9

2000 Net Income by Size of Firm, OSBA Private Practitioners Only

Size of Firm (# of Attorneys)	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
1	239	\$30,000	\$55,000	\$74,543	\$101,000	\$197,000
2-5	194	51,683	80,000	108,409	128,000	310,000
6-20	118	56,500	90,000	121,265	138,500	549,100
more than 20	119	80,000	111,500	157,977	206,250	484,500
All Attorneys	721	45,000	80,000	104,277	125,125	287,250
Full-Time Only						
1	201	\$40,000	\$69,000	\$84,554	\$114,000	\$219,900
2-5	184	53,000	80,000	108,698	127,333	300,000
6-20	112	58,000	94,000	123,491	140,000	591,400
more than 20	115	81,000	113,000	158,767	205,000	486,000
All Full-Time Attorneys	653	\$50,000	\$81,000	\$110,458	\$130,000	\$299,000

Attorney Net Income

Office Location

Exhibit 10 distributes 2000 attorney net income by office location. The same distribution for "private practitioners only" is shown as Exhibit 11. Exhibit 12 compares eight-year and average annual growth in net income since 1993 for all attorneys.

Exhibit 13 displays median 2000 net income of 10 legal occupation categories within each of seven office locations.

Exhibit 10

2000 Net Income by Office Location, OSBA Attorneys

Office Location	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
Greater Cleveland	140	\$50,000	\$90,000	\$110,078	\$147,667	\$342,000
Greater Cincinnati	95	62,250	87,000	116,566	140,000	350,900
Greater Columbus	170	45,750	80,000	112,535	131,667	354,800
Greater Dayton	47	48,125	67,500	98,821	97,813	286,400
Northeast Region	185	37,750	61,030	89,644	102,750	289,500
Northwest Region	110	45,500	76,000	86,937	118,000	230,000
Southern Region	139	43,750	74,333	83,101	109,167	182,250
Office Location Detailed						
Cleveland (Downtown)	80	\$60,500	\$103,500	\$133,351	\$157,500	\$559,750
Cleveland (Suburban)	60	39,000	59,333	78,764	128,000	201,200
Cincinnati (Downtown)	70	65,250	97,000	129,856	199,375	431,500
Cincinnati (Suburban)	25	42,000	73,333	81,480	138,667	149,700
Columbus (Downtown)	105	53,000	88,000	131,985	168,000	500,000
Columbus (Suburban)	65	36,500	66,500	82,105	106,667	331,750
Dayton	47	48,125	67,500	98,821	97,813	286,400
Canton	17	31,000	55,000	66,329	135,000	200,000
Akron	47	42,250	72,500	129,387	171,091	600,000
Toledo	56	45,250	73,500	91,315	143,000	263,750
Youngstown	14	49,000	100,000	90,462	135,000	150,000
Northeast Region	107	34,375	59,167	76,538	95,417	304,250
Northwest Region	54	48,000	78,667	82,476	115,000	176,000
Southeast Region	43	46,000	76,000	80,527	125,000	175,500
Southwest Region	62	43,125	71,500	85,195	117,500	487,500
Central Region	34	42,250	86,250	82,281	110,625	185,200
All Attorneys	892	\$45,000	\$75,000	\$99,247	\$120,000	\$274,667

Attorney Net Income

Exhibit 11

2000 Net Income by Office Location, OSBA Private Practitioners Only

Office Location	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
Greater Cleveland	116	\$48,500	\$94,000	\$111,907	\$148,250	\$436,500
Greater Cincinnati	80	61,125	92,500	119,730	149,250	366,500
Greater Columbus	134	45,000	85,500	120,194	150,000	361,000
Greater Dayton	38	46,500	69,000	105,882	119,500	325,700
Northeast Region	146	38,500	69,167	96,576	108,750	317,000
Northwest Region	94	47,500	77,500	89,394	129,625	263,750
Southern Region	109	44,000	80,000	87,424	120,000	236,600
Office Location Detailed						
Cleveland (Downtown)	70	60,000	108,000	136,985	175,000	634,000
Cleveland (Suburban)	46	39,000	58,667	74,000	115,500	194,600
Cincinnati (Downtown)	56	64,833	103,000	137,740	225,250	332,700
Cincinnati (Suburban)	24	40,500	72,500	80,708	138,833	149,750
Columbus (Downtown)	78	60,250	105,500	146,953	187,500	583,100
Columbus (Suburban)	56	35,500	71,667	84,191	108,667	293,000
Dayton	38	46,500	69,000	105,882	119,500	325,700
Canton	12	27,700	72,500	73,467	167,000	200,000
Akron	38	42,250	78,500	134,501	180,773	745,000
Toledo	48	48,500	78,333	97,696	149,500	269,750
Youngstown	10	83,000	130,000	106,222	–	150,000
Northeast Region	86	34,500	65,000	82,422	100,000	411,000
Northwest Region	46	45,750	77,250	81,092	119,500	183,000
Southeast Region	34	53,750	81,000	86,783	131,750	177,250
Southwest Region	52	43,500	75,000	89,149	125,000	216,500
Central Region	23	41,250	87,500	84,455	117,750	241,050
All Private Practitioners	721	\$45,000	\$80,000	\$104,277	\$125,125	\$287,250

Attorney Net Income

Exhibit 12 **Change in Attorney Net Income, 1993–2000, by Office Location, All OSBA Attorneys**

Office Location	2000 N	2000 Median	1997 N	1997 Median	1993 N	1993 Median	% Change Since 1993	Avg. Annual % Change
Greater Cleveland	140	\$90,000	150	\$74,250	184	\$73,250	22.9	3.3
Greater Cincinnati	95	87,000	85	80,000	113	70,000	24.3	3.5
Greater Columbus	170	80,000	145	65,000	176	67,500	18.5	2.6
Greater Dayton	47	67,500	50	82,500	59	52,000	29.8	4.3
Northeast Region	185	61,030	170	56,500	201	60,000	1.7	0.2
Northwest Region	110	76,000	137	60,000	121	63,000	20.6	2.9
Southern Region	139	74,333	127	70,000	132	59,000	26.0	3.7

Office Location Detailed

Cleveland (Downtown)	80	\$103,500	96	\$80,000	124	\$80,000	29.4	4.2
Cleveland (Suburban)	60	59,333	54	54,500	60	50,000	18.7	2.7
Cincinnati (Downtown)	70	97,000	61	82,000	88	68,500	41.6	5.9
Cincinnati (Suburban)	25	73,333	24	47,500	25	70,000	4.8	0.7
Columbus (Downtown)	105	88,000	103	70,000	143	70,000	25.7	3.7
Columbus (Suburban)	65	66,500	42	47,500	33	52,000	27.9	4.0
Dayton	47	67,500	50	82,500	59	52,000	29.8	4.3
Canton	17	55,000	20	63,500	27	50,000	10.0	1.4
Akron	47	72,500	33	59,000	54	65,500	10.7	1.5
Toledo	56	73,500	61	63,000	58	70,000	5.0	0.7
Youngstown	14	100,000	17	76,000	19	60,000	66.7	9.5
Northeast Region	107	59,167	100	51,000	101	60,000	-1.4	-0.2
Northwest Region	54	78,667	76	50,500	63	53,000	48.4	6.9
Southeast Region	43	76,000	39	62,000	56	56,500	34.5	4.9
Southwest Region	62	71,500	56	81,000	51	66,000	8.3	1.2
Central Region	34	86,250	32	59,000	25	54,000	59.7	8.5
All Attorneys	892	\$75,000	868	\$65,000	986	\$65,000	15.4	2.2

Exhibit 13 **2000 Median Net Income by Legal Occupation and Office Location, All OSBA Attorneys**

Legal Occupation	Greater Cleveland	Greater Cincinnati	Greater Columbus	Dayton	Northeast Region	Northwest Region	Southern Region
Sole practitioner	\$50,000	\$69,000	\$70,000	\$45,000	\$41,000	\$64,000	\$75,500
Sole practitioner with 1 or more assoc.	60,000	120,000	140,000	60,000	96,500	60,000	112,500
Sole practitioner sharing space	100,000	75,000	45,000	80,000	70,000	75,000	68,500
Partner in firm with 2–7 partners	120,000	111,500	87,500	103,000	82,000	107,500	98,500
Partner in firm with 8 or more partners	175,000	200,000	210,000	235,000	134,000	161,500	80,000
Assoc. in firm with 2–7 partners	64,000	65,000	44,000	71,000	52,000	46,500	42,000
Assoc. in firm with 8 or more partners	103,000	63,000	80,000	64,000	67,000	74,000	–
City/State/County government	–	–	58,000	50,000	36,000	50,000	45,000
House counsel	98,000	105,000	60,000	–	77,500	97,500	95,000
Legal aid	–	–	–	–	46,500	44,000	–

Attorney Net Income

Gender and Practice Style

Exhibit 14 compares median 2000 income by years in practice and gender. A "gender gap" is defined as the percent difference in median values between male and female attorneys expressed as "cents on the dollar a female earns compared with a male counterpart." The overall gap, considering all males and all females (as well as all full-time males and females) is 61 cents on the dollar, unchanged from 1997, which is down from 46% in 1989.

For attorneys in practice five years or less, there is a much smaller gap. In this group, for all attorneys, females earn 90 cents on the dollar, and private practitioners, 94 cents.

Approximately 91% of all respondents work full-time. Exhibit 15 displays median 1997 net income by their gender, work status and by years in practice. The following reasons are reported for those working part-time: "other businesses" (27%) "approaching retirement" (27%), "family considerations" (33%), and "economic necessity" (15%).

Exhibit 14 **2000 Median Net Income by Gender and Years in Bar, All OSBA Attorneys and Private Practitioners Only**

Years in Practice	All OSBA Attorneys				Private Practitioners Only			
	All	Males	Females	Gap	All	Males	Females	Gap
5 or less	\$47,000	\$50,000	\$45,000	90	\$50,000	\$53,000	\$50,000	94
Number of Respondents	145	79	65		105	63	41	
6–10	64,000	68,500	48,000	70	66,000	78,000	42,000	54
	96	65	31		72	49	23	
11–15	76,500	86,000	60,000	70	80,000	86,000	65,000	76
	107	69	38		79	55	24	
16–25	89,000	100,000	51,500	52	100,000	103,000	46,500	45
	264	206	55		216	175	38	
more than 25	90,000	90,000	75,000	83	90,000	90,000	105,000	117
	274	267	6		245	240	4	
All Respondents	\$75,000	\$82,000	\$50,000	61	80,000	85,000	50,000	59
Number of Respondents	892	688	195		721	584	130	

Exhibit 15 **2000 Median Net Income by Gender, Workstatus and Years in Bar, All OSBA Attorneys and Private Practitioners Only**

Years in Practice	All Attorneys				Private Practitioners Only			
	Full-time Males	Full-time Females	Part-time Males	Part-time Females	Full-time Males	Full-time Females	Part-time Males	Part-time Females
5 or less	\$50,000	\$45,000	\$23,000	\$30,000	\$54,500	\$50,000	–	\$29,000
Number of Respondents	75	57	4	8	61	36	–	5
6–10	70,000	55,000	–	25,000	78,000	55,000	–	20,000
	63	25	–	6	49	18	–	5
11–15	86,000	64,000	–	56,500	87,000	69,000	–	41,000
	67	32	–	6	54	20	–	4
16–25	100,000	62,000	27,500	30,000	110,000	60,000	27,500	25,500
	198	43	6	11	168	29	6	8
more than 25	100,000	75,000	31,000	–	100,000	105,000	21,000	–
	233	5	34	–	213	4	27	–
All Respondents	\$85,000	\$55,000	\$31,000	\$30,000	\$90,000	\$55,000	\$22,000	\$25,500
Number of Respondents	638	162	48	32	547	107	36	22

CLIENT BILLING PRACTICES AND 2001 RATES OF OSBA ATTORNEYS

Patterns and Practices

Eighty-six percent of private practitioners claim to have a standard or usual hourly rate which is applied as a guide, starting point or basis for fee computation. The median 2001 hourly billing rate for all respondents is \$150.00 per hour, a 20% increase since 1998.

Fifty-six percent of private practitioners always keep time records, 40% usually or sometimes keep time records, while only 4% do not. Given the dominating importance of time, the following is the distribution of time tracking units utilized by respondents, comparing 2001 with previous responses:

Tracking Unit (in minutes)	1990	1994	1998	2001
6	31%	55%	61%	62%
10	23	7	8	9
15	38	32	25	22
30	3	4	2	2
None	5	2	4	5

About 62% of respondents track and record time at six minute (0.1 hour) intervals and 22% track at 15 minute intervals. Respondents vary as to their charging clients for time spent on telephone calls as follows:

Practice	1990	1994	1998	2001
Always	27%	23%	20%	20%
Usually	47	42	45	43
Sometimes	20	29	30	30
Never	6	6	5	7

While hourly billing rates are not static, the frequency of updating rates has decreased since 1990:

Months Since Rate Change	1990	1994	1998	2001
0-6	31%	25%	24%	24%
7-11	20	14	14	15
12-24	31	32	31	33
More than 24	18	29	32	28

The percent change from the last previous rate increase has also diminished as follows:

Percent Increase	1990	1994	1998	2001
5% or less	20%	28%	25%	22%
6-10	44	39	38	38
11-19	22	17	19	20
20% or more	14	16	18	20

Billing Practices and Rates

The level of uncollectables is decreasing since 1998. The following distribution summarizes changes since 1990 in the extent of reported uncollectable billings:

Percentage of Uncollectables	1990	1994	1998	2001
2% or less	33%	31%	33%	37%
3–8%	35	30	32	30
9–12%	20	23	20	18
More than 12%	12	16	16	15

Most attorneys never add a service charge to a delinquent account, as follows:

Frequency of adding service charge	1990	1994	1998	2001
Always	2%	3%	6%	7%
Usually	4	5	7	8
Sometimes	14	17	16	15
Never	80	75	70	70

Attorney Hourly Billing Rates

While many interacting factors affect the setting and application of hourly billing rates, Exhibits 16 and 17 summarize five discrete factors and provide the percent change in hourly billing rates since 1994 for each element:

- Size of firm
- Years in practice
- Primary Field of Law
- Legal Classification
- Office location

Billing Practices and Rates

Exhibit 16

Distributions of 2001 Hourly Billing Rates By Selected Variables and Changes Since 1994, OSBA Private Practitioners

Size of Firm (# of Attorneys)	N	Value by Range and Percentile					N	Median	% chg '98-'01	N	Median	% chg '94-'01	% chg Avg Ann
		1988	25th	Median	Mean	75th	95th						
1	239	\$112	\$125	\$139	\$152	\$216	266	\$120	4	160	\$100	25.0	3.6
2-5	194	125	150	148	175	218	188	125	20	238	100	50.0	7.1
6-20	118	125	150	157	190	267	111	125	20	172	125	20.0	2.9
more than 20	119	148	193	205	255	360	126	150	28	165	155	24.2	3.5
Years in Practice													
5 or less	105	\$100	\$125	\$123	\$135	\$192	112	\$100	25	143	\$100	25.0	3.6
6-10	72	120	138	144	174	239	89	120	15	114	108	27.3	3.9
11-15	79	125	150	147	175	251	96	125	20	113	120	25.0	3.6
16-25	216	125	150	165	200	270	243	130	15	197	125	20.0	2.9
more than 25	245	125	150	168	200	310	171	130	15	168	125	20.0	2.9
Primary Field of Law													
Bankruptcy	23	\$130	\$167	\$160	\$189	\$247	16	\$125	33	22	\$125	33.3	4.8
Collections	18	118	125	132	150	190	13	115	9	18	100	25.0	3.6
Corporate/Business Law	59	127	175	173	206	272	67	150	17	53	145	20.7	3.0
Criminal Law (Public Def.)	12	80	113	110	138	150	23	100	13	32	100	12.5	1.8
Criminal Law (Private Def.)	12	127	158	164	258	260	18	100	58	NA	NA	NA	NA
Dom. Relations/Family Law	68	114	150	150	175	289	61	125	20	52	100	50.0	7.1
Environ./Natural Res. Law	4	168	203	181	211	220	7	140	45	12	138	46.7	6.7
General Practice	31	118	147	147	169	286	53	115	28	63	100	46.7	6.7
Health and Hospital Law	6	169	290	234	331	350	6	138	110	23	135	114.8	16.4
Pat., Trdmk. & Intell. Prop.	9	119	181	169	200	250	8	155	17	13	145	25.0	3.6
Labor Law (Defense)	17	125	165	161	205	280	20	158	4	23	135	22.2	3.2
Labor Law (Plaintiff)	12	118	180	173	258	260	9	125	44	NA	NA	NA	NA
Municipal/Public Entity Law	11	128	148	145	201	210	10	125	18	10	150	-1.7	-0.2
Product Liability	5	123	175	135	156	180	NA	NA	NA	NA	NA	NA	NA
Personal Injury (Defense)	31	103	140	138	173	209	38	100	40	40	87	60.9	8.7
Personal Injury (Plaintiff)	62	125	150	155	175	250	58	125	20	77	100	50.0	7.1
Real Property Law	52	117	133	155	186	308	33	125	6	73	100	32.5	4.6
Taxation	12	169	220	223	345	510	13	125	76	14	125	76.0	10.9
Trial Practice (General Civil)	33	130	155	168	208	275	27	148	5	48	132	17.4	2.5
Trial Practice (Commercial)	16	136	168	177	267	315	13	150	12	NA	NA	NA	NA
Wills/Estates/Probate	152	120	128	142	164	217	134	125	2	119	100	27.5	3.9
Workers' Compensation	21	117	135	142	175	200	25	140	-4	11	130	3.8	0.5
Other Fields of Law	37	140	187	187	242	355	33	125	49	37	125	49.3	7.0
Legal Classification													
Sole practitioner	243	\$100	\$125	\$138	\$150	\$219	228	\$110	14	164	\$100	25.0	3.6
Sole pract. w/1 or more assoc.	44	136	163	161	175	200	38	125	30	47	125	30.0	4.3
Sole pract. sharing space	65	125	150	148	175	294	78	125	20	75	100	50.0	7.1
Part. in firm w/2-7 part.	160	125	150	154	180	250	142	125	20	192	115	30.4	4.3
Part. in firm w/8 or more part.	85	180	210	224	270	390	97	175	20	115	175	20.0	2.9
Assoc. in firm w/2-7 part.	63	100	127	136	150	203	47	115	10	82	95	33.3	4.8
Assoc. in firm w/8 or more part.	61	125	146	157	180	261	49	125	17	89	110	32.6	4.7
All attorneys	721	\$125	\$150	\$156	\$180	\$258	716	\$125	20	764	\$110	36.4	5.2

Billing Practices and Rates

Exhibit 17

**Distributions of 2001 Hourly Billing Rates By Office Location,
OSBA Private Practitioners**

Office Location	N	Value by Range and Percentile					N	Median	% chg	% chg
	2001	25th	Median	Mean	75th	95th	1998	1998	'98-'01	Avg Ann
Greater Cleveland	116	\$125	\$165	\$177	\$200	\$370	118	\$150	10.0	3.3
Greater Cincinnati	80	125	175	175	200	316	72	150	16.7	5.6
Greater Columbus	134	136	174	178	200	314	104	149	16.9	5.6
Greater Dayton	38	141	165	165	189	250	37	140	17.9	6.0
Northeast Region	146	115	126	139	150	230	145	110	14.4	4.8
Northwest Region	94	100	125	133	150	217	118	100	25.0	8.3
Southern Region	109	115	125	133	150	197	118	110	13.6	4.5
Office Location Detailed										
Cleveland (Downtown)	70	\$145	\$175	\$195	\$241	\$373	73	\$150	16.7	5.6
Cleveland (Suburban)	46	125	150	150	177	238	45	125	20.0	6.7
Cincinnati (Downtown)	56	143	186	186	221	293	53	150	23.9	8.0
Cincinnati (Suburban)	24	125	138	152	173	310	19	125	10.0	3.3
Columbus (Downtown)	78	139	184	190	240	337	70	150	22.8	7.6
Columbus (Suburban)	56	125	150	161	194	250	34	138	8.7	2.9
Dayton	38	141	165	165	189	250	37	140	17.9	6.0
Canton	12	113	138	140	189	200	18	120	14.6	4.9
Akron	38	125	150	155	181	280	28	125	20.0	6.7
Toledo	48	125	148	151	180	219	56	125	18.7	6.2
Youngstown	10	109	124	126	169	175	16	113	9.9	3.3
Northeast Region	86	106	125	133	150	195	83	100	25.0	8.3
Northwest Region	46	99	100	113	128	172	62	95	5.3	1.8
Southeast Region	34	111	125	129	150	194	36	108	15.7	5.2
Southwest Region	52	120	147	138	150	197	52	123	19.2	6.4
Central Region	23	114	125	127	150	194	30	103	21.4	7.1
All Attorneys	721	\$125	\$150	\$156	\$180	\$258	716	\$125	20.0	6.7

Billing Practices and Rates

Work Week Time Allocation

Numerous activities consume an attorney's work week. Exhibit 18 summarizes ranges of time (measured in hours per week) across these activities. The median values for 2001 total hours worked is 47 with billable hours consuming 35 hours.

Exhibit 18

Profile of Work Week Components in Hours, OSBA Attorneys, 2001

Work Week Component (in Hours)	N	Value by Percentile				
		25th	Median	Mean	75th	95th
Billable Hours for Legal Work						
Based on Hourly Rate	537	15	25	50	35	45
Based on Flat Rate	307	5	10	15	20	40
Based on Contingency work	257	5	10	16	23	50
Total Hours for Chargeable Legal Work	809	30	35	37	40	45
Other Hours						
Office Administration	728	3	5	6	10	15
Marketing Activities	390	1	2	5	5	10
Unbilled Community/Public Service	531	2	3	5	5	15
Nonlegal employment/personal investments	338	2	4	7	5	30
Total Hours in Workweek	854	40	47	50	55	70
Other Hours/Year						
Continuing Legal Education	683	12	16	20	24	40
Unbilled (Pro Bono) Legal Work	466	10	25	50	50	200

Hourly Billing Rates for Associates & Legal Assistants

Exhibit 19 distributes 2001 median hourly billing rates for associates and legal assistants by years of experience and by office location. Exhibit 20 tracks changes since 1994. For firms employing legal assistants, the following pattern is reported with respect to client billing:

Client Billing Pattern for Legal Assistants

	1990	1994	1998	2001
Included in attorney's hourly rate	26%	22%	26%	36%
Time Basis	59	69	55	61
Self-developed fee schedule	8	4	11	2
Other system	6	5	8	1

Most firms (69%) do not employ legal assistants. For those that do, the distribution of the number employed per firm follows:

Number of Legal Assistants Employed (FTEs)

	1990	1994	1998	2001
None	65%	60%	70%	69%
1	18	18	17	22
2	6	7	5	5
3	4	3	1	1
4-6	3	5	4	-
7-10	2	2	1	1
More than 10	2	5	2	3

The larger firms have shown the most growth in employing legal assistants.

Billing Practices and Rates

Exhibit 19 **2001 Median Hourly Billing Rates, Associates and Legal Assistants by Office Location, Ohio Law Firms**

Associates	Firms	All Areas	Greater Cleveland	Greater Cincinnati	Greater Columbus	Dayton	Northeast Region	Northwest Region	Southern Region
New hires without experience	48	\$110	\$113	\$110	\$125	\$115	\$90	\$75	\$98
With at least 3 years experience	38	125	115	120	130	145	100	135	\$100
With at least 5 years experience	34	125	120	125	150	175	110	100	\$120
With at least 10 years experience	34	128	138	175	175	200	125	100	\$123
Legal Assistants (Paralegals)									
New hires without experience	36	\$50	\$85	\$54	\$65	\$70	\$43	\$45	\$50
With at least 3 years experience	23	60	90	85	92	85	45	60	\$48
With at least 5 years experience	28	73	—	50	75	95	50	60	\$73
With at least 10 years experience	42	59	61	65	85	95	55	45	\$43

Exhibit 20 **Median Hourly Billing Rates, Associates and Legal Assistants by Office Location, 1994–2001, Ohio Law Firms**

Associates	Firms 2001	Median rates 2001	Firms 1998	Median rates 1998	Firms 1994	Median rates 1994	% change since 1994	% change avg ann
New hires without experience	48	\$110	56	\$95	80	\$80	37.5	5.4
With at least 3 years experience	38	125	47	110	83	95	31.6	4.5
With at least 5 years experience	34	125	50	115	71	100	25.0	3.6
With at least 10 years experience	34	128	38	145	46	125	2.4	0.3
Legal Assistants (Paralegals)								
New hires without experience	36	\$50	43	\$50	56	\$45	11.1	1.6
With at least 3 years experience	23	60	32	60	54	50	20.0	2.9
With at least 5 years experience	28	73	35	50	61	50	46.0	6.6
With at least 10 years experience	42	59	34	63	49	50	18.0	2.6

ASPECTS OF LAW OFFICE MANAGEMENT OF OSBA ATTORNEYS

Introduction This section summarizes additional aspects of law office management in Ohio:

- 2000 law office overhead expenses per attorney compared against gross receipts per attorney
- 2001 salary levels paid associates, legal assistants and secretaries
- Marketing and advertising practices

**Overhead Expenses and
Gross Receipts per Attorney**

More than 350 respondents, representing sole practitioners and firms, provided financial information on current operating expenses per attorney and gross revenues per attorney. Exhibits 21 and 22 summarize five categories of 2000 overhead expenses against gross receipts by firm size and office location. Changes since 1993 are included on Exhibit 21.

Exhibit 21 **2000 Operating Expenses and Gross Receipts per Attorney
by Firm Size, Ohio Law Firms**

Expenditures per Attorney	—Median Values by Size of Firm—				All firms 2000	All firms 1997	All firms 1993	% change avg ann
	1	2-5	6-20	>20				
Non-legal salaries	\$26,000	\$30,000	\$24,500	\$35,000	\$27,000	\$20,000	\$20,000	5.0
Rent/phone/utilities	10,000	10,000	12,000	16,300	10,000	9,508	9,000	1.6
All other expenses	15,000	20,000	15,500	39,238	15,000	12,646	10,000	7.1
Total expenses	\$44,600	\$61,100	\$47,130	\$101,500	\$50,000	\$41,000	\$40,000	3.6
Gross receipts per attorney	\$108,000	\$150,000	\$157,500	\$220,000	\$125,000	\$104,000	\$104,000	2.9
Ratio of expenditures to receipts	0.41	0.41	0.30	0.46	0.40	0.39	0.38	—
Number of responses	186	118	35	14	353	369	337	—

Exhibit 22 **2000 Operating Expenses and Gross Receipts per Attorney
by Office Location, Ohio Law Firms**

Expenditures per Attorney	—Median Values for Offices by Geographic Location—							All Firms 2000
	Greater Cleveland	Greater Cincinnati	Greater Columbus	Dayton	Northeast Region	Northwest Region	Southern Region	
Non-legal salaries	\$23,000	\$27,648	\$27,000	\$32,500	\$25,000	\$20,000	\$30,000	\$27,000
Rent/phone/utilities	10,000	10,000	15,000	12,000	9,000	8,000	10,200	10,000
All other expenses	16,000	12,333	16,350	26,500	15,000	10,000	20,000	15,000
Total expenses	34,630	45,500	56,550	70,000	46,000	40,000	71,000	50,000
Gross receipts per attorney	\$122,500	\$137,000	\$142,000	\$140,000	\$110,000	120,000	147,500	125,000
Ratio of expenditures to receipts	0.28	0.33	0.40	0.50	0.42	0.33	0.48	0.40
Number of responses	46	35	57	21	96	49	68	372

Law Office Management

Starting and Current Salary Levels

Exhibit 23 displays 2001 annual median salary levels for four categories of associates, legal assistants and secretaries by firm size. The percent increase in median salaries since 1994 is also shown. The full distribution of these salary levels by office location is appended (Appendices A-G).

Exhibit 23

2001 Annual Median Salaries of Associates, Legal assistants and Secretaries by Size of Firm, Ohio Law Firms

Category	# of Firms	Size of Firm				All 2001	All 1998	All 1994	% change since 1994	% change avg. ann.
		1	2-5	6-20	>20					
Associates										
New hires without experience	47	–	\$32,000	\$40,000	\$67,500	\$35,000	\$31,000	\$30,000	16.7	2.4
New hires with experience	45	–	40,000	50,000	67,500	50,000	42,777	40,000	25.0	3.6
With 5 years experience	39	–	42,000	60,000	77,500	58,000	50,000	50,000	16.0	2.3
With 10 years experience	34	–	63,000	70,000	125,000	68,500	70,085	62,500	9.6	1.4
Legal Assistants (Paralegals)										
New hires without experience	35	18,000	25,000	26,000	–	25,000	23,250	19,000	31.6	4.5
New hires with experience	30	18,000	26,280	32,000	33,000	29,560	26,600	22,000	34.4	4.9
With 5 years experience	29	26,000	28,500	35,000	33,500	30,000	29,300	25,000	20.0	2.9
With 10 years experience	44	30,000	37,500	38,000	45,000	37,750	36,000	30,000	25.8	3.7
Secretaries										
New hires without experience	84	20,900	20,000	22,000	20,060	21,000	22,000	15,000	40.0	5.7
New hires with experience	84	20,500	22,250	27,500	27,500	23,000	25,000	17,000	35.3	5.0
With 5 years experience	86	21,500	24,950	30,000	27,500	25,000	28,000	20,000	25.0	3.6
With 10 years experience	142	25,000	28,000	32,000	34,000	28,000	32,000	22,000	27.3	6.8

Marketing Practices

Sixty-eight percent of respondents market and advertise their services through a variety of devices, compared with 61% in 1998 and 54% in 1994:

Marketing Device Used	1990	1994	1998	2001
Yellow Pages Block Display	72%	61%	59%	56%
Newspaper Ad	NA	14	16	11
Firm Brochure	28	34	22	27
Newspapers/Periodicals	20	17	18	20
Public Relations Firms	3	6	3	5
Firm Development Plans/Marketing	12	18	12	13
Radio/Television Ads	3	7	7	4
Seminars	22	33	24	23
Client Surveys	5	NA	NA	NA
Client Newsletter (Prepared In-house)	NA	8	18	22
Client Newsletter (Prepared by Outside Firm)	NA	5	NA	NA
Web Page	NA	NA	14	34
Listing in Legal Directory	NA	NA	59	66

On-Line Services

Exhibit 24 summarizes spending for on-line services. This and subsequent exhibits distribute responses by both firm size and practice setting. Spending increases with firm size. Between 20% and 30% of respondents use free services only. Exhibit 25 summarizes frequency of use for on-line services with more frequent usage among respondents in larger firms. Preferred tools and applications are summarized by the top three choices of respondents as Exhibit 26.

Exhibit 24 **Frequency Distributions on Spending for On-Line Services, Ohio Attorneys by Organization Size and Practice Setting, 2001**

Category	Size of Organization				All Organi- zations	Practice Setting		
	1	2-5	6-20	>20		Private Practice	House Counsel	Govt.
Use Free Service	38.3%	24.9%	10.8%	6.3%	26.4%	25.2%	21.3%	30.4%
<\$195	17.8	10.1	2.7		10.6	11.7	4.3	4.3
\$196-\$2,000	28.9	31.3	16.2		23.1	24.6	19.1	15.2
\$2,000-5,000	12.3	18.9	16.2	1.0	13.2	13.8	8.5	15.2
\$5,000-10,000	2.0	9.7	18.9	6.3	7.5	7.1	8.5	8.7
\$10,000-25,000		3.7	19.8	14.6	6.5	5.6	12.8	13.0
\$25,000-50,000	0.8	0.9	9.0	10.4	3.5	3.7	6.4	
>\$50,000		0.5	6.3	61.5	9.2	8.3	19.1	13.0
Total	100%	100%	100%	100%	100%	100%	100%	100%

Exhibit 25 **Frequency Distributions on Usage of On-Line Services, Ohio Attorneys by Organization Size and Practice Setting, 2001**

Category	Size of Organization				All Organi- zations	Practice Setting		
	1	2-5	6-20	>20		Private Practice	House Counsel	Govt.
Daily	15.9%	19.4%	28.8%	21.7%	20.1%	17.3%	25.0%	33.3%
Weekly	34.9	37.1	28.8	39.5	34.4	35.8	26.7	33.3
Bi-Weekly	11.2	11.6	10.3	8.9	11.0	10.8	11.7	10.7
Monthly	14.7	16.4	17.9	16.6	16.7	16.4	28.3	12.0
Never	23.3	15.5	14.1	13.4	17.7	19.7	8.3	10.7
Total	100%	100%	100%	100%	100%	100%	100%	100%

Exhibit 26 **Preferences for On-Line Research Tools by Product/Service, Ohio Attorneys, 2001**

Tool	First Choice		Second Choice		Third Choice	
	N	% of Total	N	% of Total	N	% of Total
Casemaster	129	41.0%	90	36.3%	21	24.4%
West	77	24.4	49	19.8	17	19.8
Lexis/Nexis	66	21.0	31	12.5	12	14.0
Anderson	27	8.6	44	17.7	16	18.6
Other	16	5.1	30	12.1	19	22.1
Lois	0	0.0	4	1.6	1	1.2
Total	315	100%	248	100%	86	100%

Law Office Management

Hardware and Software Systems and Applications

Exhibit 27 ranks the frequency of use of various support services and applications, both hardware and software. The classic products and services dominate. Exhibit 28 ranks PC installs by brand name with "other" including Macs and other PC brands and clones. Exhibit 29 enumerates reasons offered on problems associated with adapting and using new technologies. Time is mentioned alone or in combination with other factors 64% of the time, cost 46% of the time and training 54% of the time.

Exhibit 27 **Percent Using Support Systems and Applications, Ohio Attorneys by Organization Size and Practice Setting, 2001**

Category	Size of Organization				All Organi- zations	Practice Setting		
	1	2-5	6-20	>20		Private Practice	House Counsel	Govt.
Time and Billing	48.7%	56.2%	59.2%	63.7%	55.8%	63.0%	16.4%	5.0%
Accounting	49.8	54.5	55.4	53.5	53.0	58.7	27.9	5.0
Calendering	40.7	49.8	63.7	66.9	52.8	52.0	55.7	38.8
Client Info	39.5	43.8	43.9	44.6	42.6	46.3	21.3	17.5
CD-Rom Research	31.6	38.3	46.5	47.8	39.5	39.4	39.3	30.0
Scanner for Text	27.4	29.4	32.5	42.0	31.8	32.6	29.5	15.0
Case Management	22.1	29.8	29.3	42.0	29.6	28.8	24.6	31.3
Conflict Checking	14.4	23.4	31.8	52.9	27.8	30.9	3.3	3.8
Scanner for Images	21.7	23.8	22.9	36.3	25.4	25.0	32.8	12.5
Personal Digital Assistant	12.9	18.3	16.6	22.3	17.0	17.2	16.4	6.3
Trial Presentations	9.5	8.1	10.8	30.6	13.4	14.1	4.9	8.8
On Line CLE Courses	9.9	6.0	8.9	12.7	9.1	8.9	18.0	3.8
Voice Recognition	5.3	7.2	2.5	2.5	4.8	6.0	—	1.3
Remote Depositions	1.5	1.3	0.6	5.7	2.1	2.2	3.3	—

Exhibit 28 **Frequency Distributions on PC Brand in Use, Ohio Attorneys by Organization Size and Practice Setting, 2001**

Category	Size of Organization				All Organi- zations	Practice Setting		
	1	2-5	6-20	>20		Private Practice	House Counsel	Govt.
Other	43.4%	37.7%	33.8%	18.3%	35.1%	37.7%	24.1%	21.4%
Compaq	14.8	15.7	22.1	25.4	18.3	15.4	29.3	37.1
Dell	13.9	20.6	13.1	29.6	17.9	18.3	15.5	15.7
Gateway	13.1	12.6	16.6	16.9	14.7	15.4	5.2	15.7
IBM	10.2	10.8	11.7	7.0	10.7	9.7	19.0	10.0
Toshiba	2.0	1.8	2.1	2.1	2.0	1.8	6.9	—
Micron	2.5	0.9	0.7	0.7	1.3	1.7	—	—
Total	100%	100%	100%	100%	100%	100%	100%	100%

Exhibit 29 **Frequency Distributions on Problems Adapting to and Using New Technology, Ohio Attorneys, 2001**

Problem Mix	Size of Organization				All Organi- zations	Practice Setting		
	1	2-5	6-20	>20		Private Practice	House Counsel	Govt.
Lack of Time	15.5%	18.7%	11.4%	19.3%	16.4%	16.8%	13.7%	8.9%
Cost	13.7	8.9	6.8	13.4	12.6	10.0	13.7	19.6
Lack of Training	8.0	10.8	14.4	8.4	10.7	9.5	13.7	19.6
Vendor Problems	1.3	3.0	0.8	2.5	10.7	2.0	3.9	—
Management Disinterest	1.3	2.0	4.5	2.5	10.5	2.0	7.8	7.1
Lack of Time and Cost	12.8	11.3	6.1	10.9	7.3	10.5	7.8	12.5
Lack of Time and Training	15.5	11.3	12.1	10.9	4.1	13.6	9.8	7.1
Lack of Time and Vendor Problems	2.2	2.0	1.5	—	3.4	1.7	2.0	—
Lack of Time and Management Disinterest	1.3	0.5	1.5	—	3.4	1.0	—	—
Lack of Time, Training and Cost	8.0	6.4	9.1	6.7	2.7	7.0	9.8	7.1
Lack of Time, Training, Cost and Vendor Problems	5.3	4.4	3.0	—	2.5	3.8	—	—
All Factors	1.3	3.4	2.3	2.5	2.1	2.7	2.0	—
Lack of Training and Cost	2.2	5.4	4.5	3.4	1.9	4.2	2.0	5.4
Lack of Training and Vendor Problems	1.8	0.5	2.3	2.5	1.5	1.8	—	—
Cost & Management Disinterest	0.9	0.5	2.3	1.7	1.5	1.0	2.0	1.8
Lack of Training and Vendor Problems	0.4	1.0	—	0.8	1.5	0.8	—	—
Lack of Training and Management Disinterest	0.4	0.5	2.3	1.7	1.4	0.8	2.0	1.8
Lack of Time, Training and Management Disinterest	4.4	3.9	2.3	2.5	1.1	3.7	—	1.8
Lack of Time, Cost and Vendor Problems	1.8	1.0	2.3	1.7	1.0	1.7	2.0	—
All Factors Except Vendor Problems	—	1.0	4.5	5.0	0.8	2.0	2.0	1.8
Cost, Lack of Training and Vendor Problems	0.9	0.5	3.8	0.8	0.7	1.5	2.0	—
Other Combinations	0.9	3	2.3	2.5	2.3	2	3.9	5.4
Total	100%	100%	100%	100%	100%	100%	100%	100%

Summary Data Displays

Appendix A

Statistical Profile of OSBA Attorneys, Greater Cleveland Area

Income & Hourly Billing Rate	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
2000 Net Income (All Respondents)	140	\$50,000	\$90,000	\$110,078	\$147,667	\$342,000
2000 Net Income (Private Practitioners Only)	116	\$48,500	\$94,000	\$111,907	\$148,250	\$436,500
2001 Hourly Billing Rate	116	\$125	\$165	\$177	\$200	\$370

Work Week

Hours in the Work Week and Year

Total billable hours	136	27	35	35	43	57
Based on hourly rate	92	15	27	26	35	56
Based on flat rate	39	5	10	14	20	50
Based on contingency work	38	7	15	21	40	48
Office Administration	122	3	5	6	10	18
Marketing Activities	77	2	3	4	5	20
Non-billable community/public service	85	2	3	4	5	11
Non-legal employment/personal investments	52	1	2	7	6	34
Total Hours in Work Week	138	40	47	48	58	73
CLE Hours/Year	107	12	15	18	24	36
Unbilled (Pro Bono) Hours/Year	71	14	30	64	77	506

Annual Salaries (Spring 2001)

Associates

New hires without experience	—	—	—	—	—	—
With 3 years experience	4	\$48,750	\$57,500	\$53,750	\$60,000	\$60,000
With 5 years experience	7	44,250	57,500	54,571	65,000	70,000
With 10 years experience	5	67,000	110,000	94,000	120,000	120,000

Legal Assistants (Paralegals)

New hires without experience	6	17,750	23,500	21,500	25,750	280,000
With 3 years experience	—	—	—	—	—	—
With 5 years experience	—	—	—	—	—	—
With 10 years experience	6	43,875	49,500	47,583	53,750	65,000

Secretaries

New hires without experience	7	22,530	26,000	24,437	28,000	32,000
With 3 years experience	12	19,500	26,000	23,417	29,250	30,000
With 5 years experience	9	27,500	31,333	29,667	33,500	35,000
With 10 years experience	17	22,000	34,333	29,096	36,000	40,000

Summary Data Displays

Appendix B Statistical Profile of OSBA Attorneys, Greater Cincinnati Area

Income & Hourly Billing Rate	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
2000 Net Income (All Respondents)	95	\$62,250	\$87,000	\$116,566	\$140,000	\$350,900
2000 Net Income (Private Practitioners Only)	80	\$61,125	\$92,500	\$119,730	\$149,250	\$366,500
2001 Hourly Billing Rate	80	\$125	\$175	\$175	\$200	\$316

Work Week**Hours in the Work Week and Year**

Total billable hours	90	29	35	52	45	67
Based on hourly rate	57	15	25	50	35	46
Based on flat rate	29	5	10	17	27	58
Based on contingency work	30	4	16	18	29	65
Office Administration	81	2	5	6	6	22
Marketing Activities	47	1	3	14	7	32
Non-billable community/public service	51	1	3	7	6	20
Non-legal employment/personal investments	38	2	4	6	9	25
Total Hours in Work Week	94	40	47	70	55	79
CLE Hours/Year	71	12	17	21	24	85
Unbilled (Pro Bono) Hours/Year	50	10	19	30	46	100

Annual Salaries (Spring 2001)**Associates**

New hires without experience	6	\$30,000	\$36,500	\$40,500	\$48,500	\$80,000
With 3 years experience	9	42,000	50,000	51,556	63,500	85,000
With 5 years experience	5	54,000	65,000	64,800	80,000	95,000
With 10 years experience	—	—	—	—	—	—

Legal Assistants (Paralegals)

New hires without experience	5	25,000	26,000	26,300	28,000	30,000
With 3 years experience	4	31,500	37,500	34,250	38,750	40,000
With 5 years experience	—	—	—	—	—	—
With 10 years experience	—	—	—	—	—	—

Secretaries

New hires without experience	4	23,750	32,000	27,250	35,000	38,000
With 3 years experience	6	25,250	27,500	27,167	28,500	30,000
With 5 years experience	8	28,500	30,000	29,125	30,750	32,000
With 10 years experience	11	31,000	33,667	32,323	38,000	40,000

Summary Data Displays

Appendix C

Statistical Profile of OSBA Attorneys, Greater Columbus Area

Income & Hourly Billing Rate	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
2000 Net Income (All Respondents)	170	\$45,750	\$80,000	\$112,535	\$131,667	\$354,800
2000 Net Income (Private Practitioners Only)	134	\$45,000	\$85,500	\$120,194	\$150,000	\$361,000
2001 Hourly Billing Rate	134	\$136	\$174	\$178	\$200	\$314

Work Week

Hours in the Work Week and Year

Total billable hours	156	27	35	35	40	57
Based on hourly rate	102	18	25	141	35	54
Based on flat rate	43	5	10	14	20	48
Based on contingency work	36	5	9	17	35	51
Office Administration	144	4	5	8	10	20
Marketing Activities	85	1	2	4	5	10
Non-billable community/public service	102	2	3	6	5	28
Non-legal employment/personal investments	59	2	5	8	10	68
Total Hours in Work Week	165	40	48	49	57	79
CLE Hours/Year	132	12	15	17	20	34
Unbilled (Pro Bono) Hours/Year	87	12	27	43	50	163

Annual Salaries (Spring 2001)

Associates

New hires without experience	15	\$35,833	\$45,000	\$50,600	\$82,500	\$90,000
With 3 years experience	15	39,500	48,333	53,000	80,000	100,000
With 5 years experience	9	58,000	60,000	70,333	92,500	125,000
With 10 years experience	11	63,750	80,000	93,182	125,000	180,000

Legal Assistants (Paralegals)

New hires without experience	6	19,000	28,000	26,667	31,250	35,000
With 3 years experience	8	28,500	33,500	30,500	34,750	36,000
With 5 years experience	8	35,250	41,000	51,125	44,250	48,000
With 10 years experience	12	34,917	41,000	40,333	45,750	48,000

Secretaries

New hires without experience	19	20,500	24,333	22,632	31,000	37,500
With 3 years experience	17	25,000	30,000	29,029	34,000	36,000
With 5 years experience	11	29,000	34,500	31,909	35,833	36,000
With 10 years experience	21	29,000	34,333	34,000	38,500	59,000

Summary Data Displays

Appendix D

Statistical Profile of OSBA Attorneys, Greater Dayton Area

Income & Hourly Billing Rate	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
2000 Net Income (All Respondents)	47	\$48,125	\$67,500	\$98,821	\$97,813	\$286,400
2000 Net Income (Private Practitioners Only)	38	\$46,500	\$69,000	\$105,882	\$119,500	\$325,700
2001 Hourly Billing Rate	38	\$141	\$165	\$165	\$189	\$250

Work Week

Hours in the Work Week and Year

Total billable hours	44	30	36	36	44	54
Based on hourly rate	29	15	28	27	39	48
Based on flat rate	15	7	20	17	32	40
Based on contingency work	13	4	5	12	28	30
Office Administration	40	3	5	6	9	20
Marketing Activities	27	1	4	4	5	9
Non-billable community/public service	31	2	3	4	7	9
Non-legal employment/personal investments	22	1	3	5	7	36
Total Hours in Work Week	46	38	46	46	58	66
CLE Hours/Year	36	12	15	25	28	122
Unbilled (Pro Bono) Hours/Year	30	10	20	45	58	263

Annual Salaries (Spring 2001)

Associates

New hires without experience	—	—	—	—	—	—
With 3 years experience	—	—	—	—	—	—
With 5 years experience	—	—	—	—	—	—
With 10 years experience	—	—	—	—	—	—

Legal Assistants (Paralegals)

New hires without experience	—	—	—	—	—	—
With 3 years experience	—	—	—	—	—	—
With 5 years experience	—	—	—	—	—	—
With 10 years experience	4	\$37,875	\$48,750	\$43,250	\$49,375	\$50,000

Secretaries

New hires without experience	7	20,530	24,000	24,151	29,000	35,000
With 3 years experience	5	21,000	24,000	24,400	29,500	35,000
With 5 years experience	5	22,000	26,000	26,400	33,000	40,000
With 10 years experience	5	25,000	30,000	31,600	40,000	50,000

Summary Data Displays

Appendix E

Statistical Profile of OSBA Attorneys, Northeast Region (Canton, Akron, Youngstown and Northeastern Cities)

Income & Hourly Billing Rate	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
2000 Net Income (All Respondents)	185	\$37,750	\$61,030	\$89,644	\$102,750	\$289,500
2000 Net Income (Private Practitioners Only)	146	\$38,500	\$69,167	\$96,576	\$108,750	\$317,000
2001 Hourly Billing Rate	146	\$115	\$126	\$139	\$150	\$230

Work Week**Hours in the Work Week and Year**

Total billable hours	161	30	35	36	40	60
Based on hourly rate	111	15	21	26	31	57
Based on flat rate	76	5	10	13	17	40
Based on contingency work	65	5	10	16	25	58
Office Administration	138	2	5	6	8	17
Marketing Activities	62	1	2	3	5	10
Non-billable community/public service	106	2	3	5	5	20
Non-legal employment/personal investments	70	2	4	7	7	45
Total Hours in Work Week	176	40	45	47	55	71
CLE Hours/Year	143	12	18	21	24	59
Unbilled (Pro Bono) Hours/Year	96	15	26	59	95	301

Annual Salaries (Spring 2001)**Associates**

New hires without experience	10	\$23,500	\$32,500	\$31,262	\$47,500	\$50,000
With 3 years experience	9	35,000	50,000	50,757	72,900	90,000
With 5 years experience	7	32,500	55,000	48,571	75,000	80,000
With 10 years experience	6	62,750	95,000	83,833	105,000	120,000

Legal Assistants (Paralegals)

New hires without experience	9	17,667	20,000	20,833	25,000	30,000
With 3 years experience	7	19,500	26,000	24,303	29,120	38,000
With 5 years experience	8	21,750	25,500	30,220	29,000	75,000
With 10 years experience	7	23,500	28,000	29,286	30,000	50,000

Secretaries

New hires without experience	19	14,500	18,000	18,348	24,553	32,000
With 3 years experience	16	17,500	20,750	21,170	24,625	44,000
With 5 years experience	26	19,125	22,250	22,498	25,875	39,138
With 10 years experience	37	20,000	25,000	25,271	30,000	44,450

Summary Data Displays

Appendix F

Statistical Profile of OSBA Attorneys, Northwest Region (Toledo and Northwestern Cities)

Income & Hourly Billing Rate	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
2000 Net Income (All Respondents)	110	\$45,500	\$76,000	\$86,937	\$118,000	\$230,000
2000 Net Income (Private Practitioners Only)	94	\$47,500	\$77,500	\$89,394	\$129,625	\$263,750
2001 Hourly Billing Rate	94	\$100	\$125	\$133	\$150	\$217

Work Week**Hours in the Work Week and Year**

Total billable hours	99	30	33	35	41	58
Based on hourly rate	67	10	20	22	31	44
Based on flat rate	40	7	13	15	22	40
Based on contingency work	36	5	10	15	24	50
Office Administration	91	2	4	5	10	16
Marketing Activities	39	1	2	3	5	8
Non-billable community/public service	69	2	3	5	5	30
Non-legal employment/personal investments	46	1	3	6	5	30
Total Hours in Work Week	106	40	45	46	52	70
CLE Hours/Year	85	14	20	20	25	37
Unbilled (Pro Bono) Hours/Year	57	10	30	48	52	205

Annual Salaries (Spring 2001)**Associates**

New hires without experience	—	—	—	—	—	—
With 3 years experience	—	—	—	—	—	—
With 5 years experience	—	—	—	—	—	—
With 10 years experience	—	—	—	—	—	—

Legal Assistants (Paralegals)

New hires without experience	—	—	—	—	—	—
With 3 years experience	—	—	—	—	—	—
With 5 years experience	—	—	—	—	—	—
With 10 years experience	4	\$33,750	\$42,950	\$37,725	\$44,425	\$45,900

Secretaries

New hires without experience	9	13,000	16,000	14,778	17,500	24,000
With 3 years experience	10	14,809	19,925	18,578	23,250	26,000
With 5 years experience	12	19,790	24,667	23,672	30,000	30,000
With 10 years experience	18	20,750	26,150	24,685	30,000	34,000

Summary Data Displays

Appendix G

**Statistical Profile of OSBA Attorneys, Southern Region
(Southeast, Southwest and Central Regions)**

Income & Hourly Billing Rate	N	Value by Percentile				
		25th	Median	Mean (Avg.)	75th	95th
2000 Net Income (All Respondents)	139	\$43,750	\$74,333	\$83,101	\$109,167	\$182,250
2000 Net Income (Private Practitioners Only)	109	\$44,000	\$80,000	\$87,424	\$120,000	\$236,600
2001 Hourly Billing Rate	109	\$115	\$125	\$133	\$150	\$197

Work Week**Hours in the Work Week and Year**

Total billable hours	120	27	35	35	41	57
Based on hourly rate	76	15	20	24	30	63
Based on flat rate	65	5	15	18	30	44
Based on contingency work	39	4	5	9	15	35
Office Administration	110	2	5	6	8	18
Marketing Activities	51	1	1	3	5	10
Non-billable community/public service	86	2	3	4	5	18
Non-legal employment/personal investments	51	1	4	7	9	10
Total Hours in Work Week	126	40	48	47	54	68
CLE Hours/Year	108	12	22	22	25	48
Unbilled (Pro Bono) Hours/Year	74	18	29	54	52	373

Annual Salaries (Spring 2001)**Associates**

New hires without experience	8	\$29,825	\$34,500	\$68,325	\$38,750	\$315,000
With 3 years experience	4	33,750	50,000	41,250	52,500	55,000
With 5 years experience	5	45,000	65,000	59,000	75,000	75,000
With 10 years experience	6	45,250	49,750	49,667	53,750	65,000

Legal Assistants (Paralegals)

New hires without experience	4	26,670	29,000	27,390	29,500	30,000
With 3 years experience	4	17,000	30,780	23,890	32,390	34,000
With 5 years experience	5	25,000	30,500	28,108	33,250	36,000
With 10 years experience	8	26,125	33,500	31,188	37,250	40,000

Secretaries

New hires without experience	17	15,667	20,800	18,842	24,000	25,000
With 3 years experience	16	16,750	19,500	20,313	24,750	28,000
With 5 years experience	17	19,333	23,267	22,024	27,000	30,000
With 10 years experience	33	22,500	26,667	27,020	30,000	41,800

Summary Data Displays

Appendix H

**Perceptions on the Current Economic Circumstance of
Law Practice in Ohio, June 2001**

	N	Compared to last year, the economic circumstances of law are:		
		Better	Worse	Same
All Attorneys	852	16.9%	26.0%	57.2%
Cleveland (Downtown)	75	13.9	35.4	50.6
Cleveland (Suburban)	58	13.6	37.3	49.2
Cincinnati (Downtown)	68	21.7	29.0	49.3
Cincinnati (Suburban)	25	16.0	28.0	56.0
Columbus (Downtown)	100	11.9	28.7	59.4
Columbus (Suburban)	62	27.4	12.9	59.7
Dayton	45	6.4	31.9	61.7
Canton	15	23.5	29.4	47.1
Akron	45	19.0	31.0	50.0
Toledo	56	19.6	23.2	57.1
Youngstown	14	14.3	14.3	71.4
Northeast Region	107	15.2	31.4	53.3
Northwest Region	52	11.3	15.1	73.6
Southeast Region	40	28.2	15.4	56.4
Southwest Region	59	16.7	20.0	63.3
Central Region	31	18.2	9.1	72.7
Organization Size (# of Attorneys)				
1	260	18.1	22.3	59.6
2-5	229	21.4	25.8	52.8
6-20	153	14.4	24.8	60.8
more than 20	150	12.0	32.7	55.3
Years In Practice				
5 or less	137	21.9	20.4	57.7
6-10	94	22.3	24.5	53.2
11-15	103	21.4	22.3	56.3
16-25	258	16.3	29.1	54.7
more than 25	269	11.2	27.5	61.3
Legal Classification				
Sole practitioner	242	16.9	23.6	59.5
Sole practitioner with 1 or more associates	43	41.9	23.3	34.9
Sole practitioner sharing space	64	14.1	40.6	45.3
Partner in firm with 2-7 partners	158	20.3	20.3	59.5
Partner in firm with 8 or more partners	85	11.8	34.1	54.1
Associate in firm with 2-7 partners	60	18.3	26.7	55.0
Associate in firm with 8 or more partners	59	11.9	35.6	52.5
City/State/County	54	33.3	33.3	33.3
House counsel	56	14.3	21.4	64.3
Counsel with legal aid/legal service agency	14	-	21.4	78.6

Summary Data Displays

Appendix I

**Perceptions on Future Economic Conditions of
Law Practice in Ohio, June 2001**

	N	Next year, the economic circumstances of law will be:		
		Better	Worse	Same
All Attorneys	852	18.9%	19.7%	61.4%
Cleveland (Downtown)	75	20.0	21.3	58.7
Cleveland (Suburban)	58	20.7	27.6	51.7
Cincinnati (Downtown)	68	13.2	25.0	61.8
Cincinnati (Suburban)	25	16.0	20.0	64.0
Columbus (Downtown)	100	18.0	24.0	58.0
Columbus (Suburban)	62	24.2	9.7	66.1
Dayton	45	13.3	24.4	62.2
Canton	15	26.7	33.3	40.0
Akron	45	17.8	31.1	51.1
Toledo	56	21.4	16.1	62.5
Youngstown	14	7.1	14.3	78.6
Northeast Region	107	17.8	23.4	58.9
Northwest Region	52	19.2	17.3	63.5
Southeast Region	40	25.0	5.0	70.0
Southwest Region	59	18.6	6.8	74.6
Central Region	31	22.6	12.9	64.5
Organization Size (# of Attorneys)				
1	255	22.7	16.9	60.4
2-5	229	19.7	18.8	61.6
6-20	151	17.9	19.9	62.3
more than 20	149	16.1	23.5	60.4
Years In Practice				
5 or less	134	26.1	14.2	59.7
6-10	91	18.7	17.6	63.7
11-15	106	16.0	20.8	63.2
16-25	256	17.6	23.4	59.0
more than 25	265	17.4	18.9	63.8
Legal Classification				
Sole practitioner	237	21.9	18.6	59.5
Sole practitioner with 1 or more associates	44	34.1	20.5	45.5
Sole practitioner sharing space	65	16.9	24.6	58.5
Partner in firm with 2-7 partners	158	19.0	17.1	63.9
Partner in firm with 8 or more partners	85	17.6	23.5	58.8
Associate in firm with 2-7 partners	61	18.0	16.4	65.6
Associate in firm with 8 or more partners	56	23.2	25.0	51.8
City/State/County	52	15.4	11.5	73.1
House counsel	55	9.1	25.5	65.5
Counsel with legal aid/legal service agency	15	6.7	13.3	80.0

Summary Data Displays

Appendix J

Perceptions on the Current Supply of Lawyers In Ohio, June 2001

	N	The number of lawyers in the community in which I practice is:		
		About right	Too many	Too few
All Attorneys	869	50.5%	47.3%	2.3%
Cleveland (Downtown)	79	35.4	63.3	1.3
Cleveland (Suburban)	59	39.0	61.0	—
Cincinnati (Downtown)	68	30.9	67.6	1.5
Cincinnati (Suburban)	25	60.0	36.0	4.0
Columbus (Downtown)	101	45.5	53.5	1.0
Columbus (Suburban)	61	59.0	39.3	1.6
Dayton	47	31.9	68.1	—
Canton	17	47.1	52.9	—
Akron	46	41.3	58.7	—
Toledo	56	44.6	55.4	—
Youngstown	14	28.6	71.4	—
Northeast Region	106	65.1	31.1	3.8
Northwest Region	52	69.2	28.8	1.9
Southeast Region	43	65.1	20.9	14.0
Southwest Region	61	65.6	31.1	3.3
Central Region	34	73.5	20.6	5.9
Organization Size (# of Attorneys)				
1	260	50.8	46.5	2.7
2–5	231	54.1	43.3	2.6
6–20	154	51.3	48.1	0.6
more than 20	154	46.8	50.6	2.6
Years In Practice				
5 or less	140	66.4	32.1	1.4
6–10	95	54.7	43.2	2.1
11–15	106	57.5	38.7	3.8
16–25	257	47.1	49.4	3.5
more than 25	271	41.7	57.2	1.1
Legal Classification				
Sole practitioner	241	50.2	46.9	2.9
Sole practitioner with 1 or more associates	43	53.5	46.5	—
Sole practitioner sharing space	65	47.7	52.3	—
Partner in firm with 2–7 partners	158	48.1	47.5	4.4
Partner in firm with 8 or more partners	84	35.7	64.3	—
Associate in firm with 2–7 partners	62	59.7	40.3	—
Associate in firm with 8 or more partners	59	57.6	42.4	—
City/State/County	56	53.5	46.5	—
House counsel	58	48.1	47.5	4.4
Counsel with legal aid/legal service agency	17	35.7	64.3	—

Summary Data Displays

Appendix K

**Perceptions on the Current Demand for
Legal Services in Ohio, June 2001**

	N	The quantity of my legal work is:		
		Insufficient	All I can handle	More than I prefer
All Attorneys	872	14.8%	58.6%	26.6%
Cleveland (Downtown)	79	20.3	55.7	24.1
Cleveland (Suburban)	60	30.0	43.3	26.7
Cincinnati (Downtown)	70	17.1	58.6	24.3
Cincinnati (Suburban)	24	25.0	54.2	20.8
Columbus (Downtown)	103	13.6	63.1	23.3
Columbus (Suburban)	63	9.5	61.9	28.6
Dayton	46	15.2	65.2	19.6
Canton	17	29.4	47.1	23.5
Akron	46	13.0	63.0	23.9
Toledo	56	19.6	62.5	17.9
Youngstown	14	–	71.4	28.6
Northeast Region	106	15.1	58.5	26.4
Northwest Region	53	3.8	67.9	28.3
Southeast Region	41	9.8	46.3	43.9
Southwest Region	60	11.7	58.3	30.0
Central Region	34	–	52.9	47.1
Organization Size (# of Attorneys)				
1	257	22.6	53.7	23.7
2–5	233	10.3	60.1	29.6
6–20	156	10.9	62.2	26.9
more than 20	156	11.5	63.5	25.0
Years In Practice				
5 or less	143	14.0	65.0	21.0
6–10	92	13.0	64.1	22.8
11–15	107	14.0	55.1	30.8
16–25	261	11.1	57.9	31.0
more than 25	268	19.8	54.9	25.4
Legal Classification				
Sole practitioner	241	22.8	51.9	25.3
Sole practitioner with 1 or more associates	43	7.0	55.8	37.2
Sole practitioner sharing space	65	21.5	58.5	20.0
Partner in firm with 2–7 partners	159	8.8	57.9	33.3
Partner in firm with 8 or more partners	84	14.3	61.9	23.8
Associate in firm with 2–7 partners	62	14.5	66.1	19.4
Associate in firm with 8 or more partners	61	6.6	72.1	21.3
City/State/County	57	21.1	56.1	22.8
House counsel	59	3.4	57.6	39.0
Counsel with legal aid/legal service agency	16	6.3	50.0	43.8

Exhibit 3

FUCHS AFFIDAVIT

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

SCOTT D. DALESANDRO, <i>et al.</i>,)	Case No. C-1-01-109
On behalf of themselves and all)	
others similarly situated,)	Judge Sandra S. Beckwith
)	
Plaintiff,)	AFFIDAVIT OF JACK F. FUCHS,
)	ESQ.
vs.)	
)	
THE INTERNATIONAL PAPER)	
COMPANY,)	
)	
Defendants.)	

State of Ohio)
) ss:
County of Hamilton)

I, Jack F. Fuchs, Esq., after first being duly sworn upon my oath, state as follows:

1. I make this affidavit upon personal knowledge. I am a partner with the law firm of Thompson Hine LLP. Thompson Hine LLP is a national law firm. Thompson Hine LLP has approximately 360 attorneys with offices in Brussels, Belgium, Cincinnati, Cleveland, Columbus and Dayton, Ohio, and Washington, D.C.

2. I received my B.A. from the University of Chicago in 1974, my M.A. from the University of Cincinnati in 1976, and my J.D. from the University of Cincinnati Law School in 1982. While in law school, I was an articles editor of the University of Cincinnati Law Review and a member of the Order of the Coif.

3. Upon graduating from law school, I clerked for the late Honorable John W. Peck of the United States Court of Appeals for the Sixth Circuit.

4. I am licensed to practice law in the state of Ohio and the Commonwealth of Kentucky. I am admitted to practice in the United States District Courts for the Southern and Northern Districts of Ohio, the Eastern and Western Districts of Kentucky, and the Southern

District of Indiana. I am admitted to practice in the United States Courts of Appeals for the First, Third, Fourth, Fifth and Sixth Circuits. I have appeared *pro hac vice* in numerous other courts including *inter alia* the Arkansas Supreme Court, the New Jersey Court of Appeals, the United States District Courts for the Middle and Western Districts of Pennsylvania and the District of Maryland, and the United States Bankruptcy Courts for the District of Columbia and the District of Maryland. I have been qualified to testify as an expert on attorney fees and on settlements in both state and federal courts. I am rated *av* by Martindale-Hubbe and have been cited in *Who's Who in America* and *Who's Who in American Law*.

5. I concentrate my practice on commercial litigation, with an emphasis on fiduciary issues including employee benefits litigation. From 1989 through 1996, I was a member of the Blue Chip Savings Bank board of directors and from 1991 through 1996 a member of its ESOP committee.

6. Among my publications is *Federalizing State Law Tort & Contract Claims: The Scope of ERISA Preemption*, 39 Fed. Bar News & J. 582 (1992). Among the seminars that I have given are:

- a. *ERISA Claims and Litigation in Ohio*, Lorman (Nov. 10, 2000);
- b. *Life After Great-West: Subrogation in ERISA Actions*, Kentucky CLE (KATA May 29, 2002);
- c. *Who Is the Client?* Sixteenth Annual Cincinnati Employee Benefits IRS Conference (June 2003); and,
- d. *Litigation Issues for Planners and Advisors*, International Association of Financial Planners (Feb. 4, 1994).

7. I have handled numerous litigations involving issues arising under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). The following is a partial list of ERISA cases in which I have appeared as counsel:

- a. *Varhola v. Doe*, 820 F.2d 809 (6th Cir. 1987) (successful defense of plan trustees on ERISA interference and breach of fiduciary duty class claims)
- b. *Hardy v. Midland Enterprises, Inc.*, 66 Fed. Appx. 535, 2003 U.S. App. LEXIS 8426 (6th Cir. Apr. 30, 2003) (affirming summary judgment for client on ERISA retiree health claims), *aff’g*, C-1-00-455 (S.D. Ohio Oct. 15, 2001)
- c. *Washburn v. UNUM Life Ins. Co.*, 2000 U.S. App. LEXIS 6481 (6th Cir. 2000) (affirmance of judgment for client on ERISA claims), *aff’g*, 43 F. Supp. 2d 848 (S.D. Ohio 1998) (summary judgment for fiduciary on ERISA § 510 claim)
- d. *Torello v. UNUM Life Ins. Co.*, 1999 U.S. App. LEXIS 32228 (6th Cir. 1999) (affirmance of judgment for client on ERISA claims involving issues of late notice), *rehearing & rehearing en banc denied*, (6th Cir. 2000)
- e. *Tolton v. Ohio Biodyne, Inc.*, 48 F.3d 937 (6th Cir. 1994) (affirmance of defense judgment for managed mental health care company and providers on claims of malpractice and wrongful denial of benefits under ERISA preemption analysis), *aff’g*, 854 F. Supp. 505 (N.D. Ohio 1993) (summary judgment for managed mental health care client)
- f. *Metropolitan Life Ins. Co. v. Cronenwett*, 162 F. Supp. 2d 889 (S.D. Ohio 2001) (dismissal of client fiduciary in ERISA action)
- g. *Shepherd v. Babcock & Wilcox Co.*, C-3-98-391 (S.D. Ohio 2001) (dismissal via nominal settlement of action filed on behalf of putative classes for alleged violations of ERISA § 510 involving retiree benefits upon reduction in force at Department of Energy facility; no class certified)
- h. *Berner v. The Little Tikes Co.*, No. 1:CV-99-0679 (M.D. Pa. 2000) (denial of motion to certify class and grant of motion to dismiss ERISA class claim in action against client arising from closure of plant)
- i. *Mitchell v. First UNUM Life Ins. Co.*, 65 F. Supp. 2d 686 (S.D. Ohio 1998) (summary judgment on ERISA fiduciary duty and benefits claims for client fiduciary)
- j. *Kentucky Laborers Dist. Council Health & Welfare Trust Fund v. Hill & Knowlton, Inc.*, 24 F. Supp. 2d 755 (W.D. Ky. 1998) (partial summary judgment

for client on class action tobacco, including ERISA, claims which ultimately led to voluntary dismissal by plaintiffs)

- k. *Kunath v. Academy of Medicine*, No. 93-49 (E.D. Ky. 1995) (dismissal of class action claims against client insurer in ERISA case)
- l. *Stozich v. Tower Place Ltd. Partnership*, No. C-1-93-509 (S.D. Ohio Mar. 11, 1994) (recognizing undersigned as "competent class counsel" in action removed to district court under ERISA that involved challenge to state prevailing wage law)
- m. *Campensa v. Blue Cross & Blue Shield of Northern Ohio*, Case No. 1:92CV0230 (N.D. Ohio 1993) (summary judgment for client on ERISA preemption grounds)
- n. *Chao v. RADAC Corp.*, No. 2000-52 (E.D. Ky. 2002) (settled DOL claims of ERISA breach of fiduciary duty with express denial of liability in settlement agreement filed with court and no expense paid by defendants out of pocket)
- o. *Brown v. Long Term Disability Plan*, No. C-3-98-252 (S.D. Ohio 1999) (granting partial summary judgment for plan on ERISA disability benefits claim filed)
- o. *Triplett v. Blue Cross & Blue Shield of Missouri*, No. 1:92-cv-00741 (S.D. Ohio 1993) (granting summary judgment on bulk of ERISA benefits claims).

Among the ERISA cases in which I am currently counsel of record are *Clevenger v. Dillard's Department Stores, Inc.*, No.C-1-02-588 (S.D. Ohio) (trial counsel for defendants in ERISA putative class action, which is currently stayed pending remand to administrator due to failure of plaintiff's counsel to exhaust administrative remedies), *Kurtz v. Broadwing Inc.*, No. C-1-02-0857 (S.D. Ohio) (trial counsel for directed trustee in multiple putative ERISA class actions awaiting on ruling on consolidation), *Anderson v. The Cincinnati Gas & Elec. Co.*, No. C-1-02-160 (S.D. Ohio) (trial counsel for defendant in ERISA § 510 claim), and *Henry v. UNUM Life Ins. Co.*, No. C-2-02-9222 (S.D. Ohio) (trial counsel for claims administrator in ERISA § 502(a)(1)(B) claim).

8. I previously have been retained to provide expert testimony relating to fees in ERISA litigation. In *Solutia Inc. v. Forsberg*, 3:98cv237 RV\SMN (N.D. Fla. 2002), I was

retained on behalf of Solutia in an ERISA retiree health class action to review the fees of class counsel and to provide an independent opinion regarding the propriety of the fees claimed. Additionally, I have counseled clients regarding the termination of benefit plans and the amendment of plans prior to the sale of a company's division or plant. From these and other ERISA-related representations, I am familiar with the fees charged by counsel engaged in ERISA litigation on both a local and a national basis.

9. In addition to the ERISA cases identified above, I have handled a number of other class actions or actions that were sought to be certified as class actions. Among these cases are the following:

- a. *Carr v. Countrymark Cooperative, Inc.*, No. C2-96-1246, 1998 U.S. Dist. LEXIS 23000 (S.D. Ohio 1998)
- b. *In re Washington Public Power Supply System Securities Litigation*, MDL 551 (1990)
- c. *Bell v. Straight, Inc.*, 707 F. Supp 325 (S.D. Ohio 1989)
- d. *Harris v. Alexander Grant & Co.*, 61 Ohio App. 3d 172, 572 N.E.2d 226 (1990).

In *Bell*, I was appointed plaintiffs' class counsel with Gerald Simmons, Esq. to pursue recovery in a *cy pres* action. In *Harris*, I was appointed class counsel to represent a defendant class of partners of an accounting firm. In *Carr*, I was lead defense counsel in an action that ultimately was not certified as a class. In the *WPPSS* class litigation, I represented a defendant that was ultimately dismissed.

10. My preferred rate is the ordinary rate (without a discount) that I charge to clients in ERISA actions. Certain clients, usually insurance companies in ERISA benefits actions, have received a discount from my preferred rates. My preferred rate (*i.e.*, my ordinary rate without a discount) for handling ERISA cases in 2001 was \$245.00 per hour. My preferred rate (*i.e.*, my

ordinary rate without a discount) for handling ERISA cases in 2002 was \$250.00 per hour. My current preferred rate (*i.e.*, my ordinary rate without a discount) for handling ERISA cases is \$260.00 per hour. I am charging \$260.00 for my time in reviewing materials and preparing this affidavit.

11. I have reviewed Plaintiffs' Motion for Attorney Fees, Expenses, Interest and Incentive Awards (with appendices) filed in the lawsuit captioned as *Dalesandro v. The International Paper Co.*, Case No. C-1-01-109 (S.D. Ohio). I have also reviewed a draft of Defendant's Response.

12. Based on my review of the *Dalesandro* materials listed above, my knowledge of my own rates and those of other ERISA litigators, and my years of experience as an ERISA litigator, it is my opinion that a reasonable hourly rate in this locale for a litigator having fifteen (15) or more years of ERISA litigation experience and representing one of the parties in *Dalesandro* would be in the range of \$250 per hour in 2001, *i.e.*, from \$225 to \$275 per hour. It is further my opinion that the reasonable hourly rate in subsequent years would increase by from \$5.00 to \$15.00 per year.

12. Based on my review of the *Dalesandro* materials listed above, my knowledge of my own rates and those of other litigators in the field, and my years of experience as an ERISA litigator, it is my opinion that a reasonable hourly rate in this locale for a litigator having between eight (8) and ten (10) years of ERISA litigation experience and representing one of the parties in *Dalesandro* would be in the range of \$200 per hour in 2001, *i.e.*, from \$175 to \$225 per hour. It is further my opinion that the reasonable hourly rate in subsequent years would increase by from \$5.00 to \$15.00 per year.

14. Based on my review of the *Dalesandro* materials listed above, my knowledge of my own rates and those of other litigators in the field, and my years of experience as an ERISA litigator, it is my opinion that the hourly rates requested by plaintiffs' counsel are neither fair nor reasonable. It is my opinion that the rates requested by plaintiffs' counsel are particularly excessive if, as appears from my review of the matters handled by plaintiffs' counsel in the Pacer database for the Southern District of Ohio, plaintiffs' counsel lacked significant prior ERISA litigation experience.

15. Based on my review of the *Dalesandro* materials listed above, my knowledge of my own rates and those of other litigators in the field, and my years of experience as an ERISA litigator, it is my opinion that the hours charged by plaintiffs' counsel, and for which plaintiffs' counsel seeks recovery, are neither fair nor reasonable; rather, it is my opinion that those hours are excessive.

17. Based upon my review of the *Dalesandro* materials listed above, and my years of experience as an ERISA litigator, it is my opinion that numerous attorneys and law firms, including attorneys and firms throughout the Midwest, could have provided thorough, effective, and proper representation to the plaintiffs in the *Dalesandro* litigation at hourly rates similar to mine.

FURTHER AFFIANT SAYETH NAUGHT.



Jack F. Fuchs

Subscribed and sworn to before me this 16th day of September, 2003.



Notary Public

GERALD W. SIMMONS, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date
Section 147.02 R. C.

Exhibit 4

Service: **Get by LEXSEE®**
Citation: **2003 us dist lexis 10386**

*2003 U.S. Dist. LEXIS 10386, **

ANGLO-DANISH FIBRE INDUSTRIES, LTD., and CEMFIBER A/S, Plaintiffs, vs. COLUMBIAN ROPE CO., Defendant.

CASE NO: 01-2133-G/V

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION

2003 U.S. Dist. LEXIS 10386

January 28, 2003, Decided
January 28, 2003, Filed; January 30, 2003, Entered

DISPOSITION: [*1] Plaintiffs awarded attorney fees and denied award of expenses.

CASE SUMMARY


PROCEDURAL POSTURE: Plaintiff patentees brought a patent infringement action against defendant alleged infringers regarding their sale of certain concrete-fiber products. Following a settlement agreement between the parties, the patentees requested attorney fees and expenses pursuant to 35 U.S.C.S. § 285.


OVERVIEW: The alleged infringer objected to the amount requested by the patentees for attorney fees and expenses claiming that the hourly rates requested by the patentees were excessive, and the patentees failed to substantiate a reasonable hourly rate for this community, that it did not agree to pay expenses, and that the patentees' request included excessive charges and charges for unnecessary work. The court initially held that it would apply the prevailing hourly rate in the venue where the case was tried, and that the patentees failed to meet their burden of showing that their requested rates for their law firm's partners were in line with that prevailing hourly rate. The court then held that the patentees were entitled to reasonable attorney fees except for time spent on issues for which the patentees withdrew their requests for compensation, for descriptions that were too vague for assessment of the reasonableness of hours expended in association with them, and for billing entries that were excessive or redundant. The court finally held that an award of reasonable expenses was not appropriate because the fee award was made pursuant to the parties' settlement agreement.

OUTCOME: The patentees' request for attorney fees was granted with certain reductions. The patentees' request for expenses was denied.

CORE TERMS: billing, settlement agreement, expended, vague, hourly rate, preparing, partner, excessive, billed, increment, compensable, hourly, phase, spent, settlement, padding, time spent, lodestar, email, memorandum, paralegal, minutes, patent infringement, mixed, reasonable attorney, work performed, total amount, disproportionate, reasonableness, reduction


LexisNexis (TM) HEADNOTES - Core Concepts - ♦ [Hide Concepts](#)


Patent Law > Remedies > Costs & Attorney Fees 


HN1  35 U.S.C.S. § 285 governs attorney fees in a patent infringement

case. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 

HN2  In deciding what is a reasonable attorney fee, the starting point is the determination of the lodestar amount, which is calculated by multiplying the number of reasonable hours expended by a reasonable hourly rate for legal services. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 

HN3  Under the lodestar method, a starting point for calculating attorney fees is the determination of a reasonable hourly rate. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 


HN4  The United States Supreme Court recognizes the community market rule as the proper way to determine a reasonable hourly rate for attorney fees. The community market rule has the principal virtue of being the easiest way to cope with the inherently problematic task of ascertaining a reasonable fee in a situation where wide variations in skill and reputation render the usual laws of supply and demand largely inappropriate. In applying the community market rule, the court looks to rates for similar services in the community by attorneys with reasonably comparable skills. The burden is on the fee applicant to produce satisfactory evidence, in addition to the attorney's own affidavits, that the requested rates are in line with those prevailing in the community. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 


HN5  It is within the court's discretion to calculate attorney fees based on a prevailing hourly rate in the venue where the case is tried. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 


HN6  Once the court has determined the appropriate hourly rate for attorney fee purposes, the court must then determine what number of hours were reasonable. The lodestar method of calculation does not solve the problem of excessive hours. It is within the court's discretion to reduce the total hours if they seem unreasonable. The question is not whether a party prevailed on a particular motion, nor whether, in hindsight, the time expended was strictly necessary to obtain relief achieved; instead, the question is whether a reasonable attorney would believe the work to be reasonably expended in pursuit of success at the time when the work was performed. [More Like This Headnote](#)

[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 

HN7  Three very different kinds of issues can arise concerning excessive hours for attorney fee purposes: (1) factual questions about whether the lawyer actually worked the hours claimed or is padding the account; (2) legal questions about whether the work performed is sufficiently related to the points on which the client prevailed as to be compensable; (3) mixed questions about whether the lawyer used poor judgment in spending too many hours on some part of the case or by unnecessarily duplicating the work of co-counsel. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 


[Civil Procedure](#) > [Appeals](#) > [Standards of Review](#) > [Clearly Erroneous Review](#) 


HN8  A court's determination on the factual issues concerning excessive hours for attorney fee purposes will be upheld unless it is clearly erroneous. A court's determination on the legal issues, i.e., questions of compensability, are reviewed for error. A court's determination on the mixed issues, i.e., questions of judgment,


will be upheld unless the court's interpretation of the profession's reasonable billing practices was arbitrary or irrational. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 


HN9  The applicant for attorney fees has the burden of demonstrating the reasonableness of hours, and the opposing party has the burden of producing evidence against this reasonableness. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 

HN10  Allegations against the reasonableness of attorney fees unsupported by evidence cannot justify a favorable ruling. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 


HN11  The total hours spent preparing an attorney fee application are capped at three percent of the hours in the main case when the issue is submitted on the papers without a trial. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Attorney Fees](#) 

HN12  Attorney fees include all services in the preparation for and performance of legal services related to the suit. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Attorney Fees](#) 


HN13  The United States Supreme Court holds that attorneys' work, even if performed outside the traditional litigation context, is compensable as long as it is necessary to the attainment of adequate relief for the client. A reasonable amount of pre-suit investigation and client communication is necessary before a competent attorney can identify the alleged wrong, identify which of his client's rights were infringed, and craft an appropriate claim for relief. Accordingly, pre-suit hours are compensable to the extent that they reflect reasonable billing judgment. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 


HN14  Attorneys must maintain billing time records that are sufficiently detailed to enable the courts to review the reasonableness of the hours expended. Where records are ambiguous, courts should not apply any presumption in favor of the party seeking the fee. To the contrary, entries that provide little guidance in ascertaining the purpose of the work during the time claimed do not merit an award. [More Like This Headnote](#)

[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 


HN15  The court should exclude from its attorney fee calculation hours that are excessive, redundant, or otherwise unnecessary. A court may deny compensation for redundant records on an item-by-item basis, or on an across-the-board percentage basis. A court denying compensation for excessive hours, i.e., time disproportionate to the tasks, must identify the hours and state why they are being reduced. [More Like This Headnote](#)

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HN16  For purposes of determining a reasonable attorney fee, interoffice conferences are the type of inefficiency and duplication of services that may occur in cases where more than one attorney is used. [More Like This Headnote](#)

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HN17 For purposes of determining a reasonable attorney fee, naturally it is within the profession's reasonable billing practice for a partner to guide a less experienced attorney in a task. However, in a complex matter a more experienced attorney could perform the work in less time than an inexperienced attorney. [More Like This Headnote](#)

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HN18 For purposes of determining a reasonable attorney fee, when the allegation is that attorneys spent too much time on a particular task, the inquiry is whether they complied with the reasonable billing practices of the profession. This requires a fair assessment of the needs of the particular case. [More Like This Headnote](#)

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HN19 For purposes of determining a reasonable attorney fee, the court looks with disfavor on minimum billing increments because they result in padding of time and do not accurately reflect the actual time required to perform a particular service. Padding hours demonstrates lack of billing judgment, and hours may be cut for padding. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 

HN20 For purposes of determining a reasonable attorney fee, using less experienced attorneys at a lower hourly rate actually may increase the total number of hours expended depending on the efficiency of the younger attorneys. Excessive hours are a particular problem when firms use legal research to train relatively new associates. [More Like This Headnote](#)

[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 

HN21 For purposes of determining a reasonable attorney fee, after determining the lodestar amount, the court in its discretion may adjust the award upward or downward to assess a reasonable award. The most important factor is the results obtained. [More Like This Headnote](#)

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[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Attorney Fees](#) 

HN22 An award of attorney fees made pursuant to statute may include reasonable expenses. [More Like This Headnote](#)

COUNSEL: For ANGLO-DANISH FIBRE INDUSTRIES, LTD., CEMFIBER A/S, plaintiffs: John C. Speer, Esq., BAKER DONELSON BEARMAN & CALDWELL, Memphis, TN.

For ANGLO-DANISH FIBRE INDUSTRIES, LTD., CEMFIBER A/S, plaintiffs: John E. Slaughter, David A. Harlow, MOORE & VAN ALLEN, Durham, NC.

For ANGLO-DANISH FIBRE INDUSTRIES, LTD., plaintiff: Ted E Corvette, MOORE & VAN ALLEN, PLLC, Durham, NC.

For COLUMBIAN ROPE CO., defendant: Alexander W. Wellford, Jr., Esq., HUMPHREYS DUNLAP WELLFORD ACUFF & STANTON, P.C., Memphis, TN.

For COLUMBIAN ROPE CO., defendant: Rahul Karnani, Dale Lischer, SMITH GAMBRELL & RUSSELL, LLP, Atlanta, GA.

DIANE VESCOVO, miscellaneous, Pro se, Memphis, TN.

For COLUMBIAN ROPE CO., counter-claimant: Alexander W. Wellford, Jr., Esq., HUMPHREYS DUNLAP WELLFORD ACUFF & STANTON, P.C., Memphis, TN.

For ANGLO-DANISH FIBRE INDUSTRIES, LTD., CEMFIBER A/S, counter-defendants: John C. Speer, Esq., BAKER DONELSON BEARMAN & CALDWELL, Memphis, TN.

For ANGLO-DANISH FIBRE INDUSTRIES, LTD., CEMFIBER A/S, counter-defendants: **[*2]** John E. Slaughter, David A. Harlow, MOORE & VAN ALLEN, Durham, NC.

For ANGLO-DANISH FIBRE INDUSTRIES, LTD., counter-defendant: Ted E Corvette, MOORE & VAN ALLEN, PLLC, Durham, NC.

JUDGES: DIANE K. VESCOVO, UNITED STATES MAGISTRATE JUDGE. JULIA S. GIBBONS, UNITED STATES CIRCUIT JUDGE (Sitting by Designation).

OPINIONBY: DIANE K. VESCOVO

OPINION: ORDER ON PLAINTIFFS' REQUEST FOR ATTORNEY FEES

Before the court is the request of the plaintiffs, Anglo-Danish Fibre Industries, Ltd. and Cemfiber A/S, for attorney fees and expenses pursuant to 35 U.S.C. § 285 as the prevailing party in a patent infringement case. The request was referred to the United States Magistrate Judge for determination. For the reasons that follow, it is determined that a reasonable award of attorney fees is \$ 66,707.66.

BACKGROUND

The plaintiffs commenced this action for patent infringement on February 22, 2001, against the defendant, Columbian Rope Company. In their complaint, the plaintiffs alleged that Columbian Rope infringed two or more claims of U.S. Patent No. 5,399,195 (the '195 patent) by the sale of certain concrete-fiber products, particularly Columbian Rope's Super-76-Crack Reducer. By **[*3]** October 31, 2001, some eight months later, a settlement was reached. Various disputes about the settlement agreement arose. All were resolved except the question of whether the settlement agreement would bind Columbian Rope's successors in interest. This dispute led to a motion by Columbian Rope to enforce the settlement agreement. The issue was resolved by the court's ruling of June 21, 2002, granting Columbian Rope's motion to enforce the October 2001 settlement agreement.

As part of the settlement agreement, Columbian Rope agreed to pay the plaintiffs' reasonable attorney fees "in lieu of damages for past infringement." The agreement further provided the magistrate judge would determine the amount of reasonable attorney fees based on written submissions of the parties. Pursuant to the settlement agreement, an interlocutory consent judgment of validity and infringement, including an injunction against future manufacture and sale of infringing products or fibers, was entered on November 18, 2002, and the plaintiffs' application for reasonable attorney fees was referred to the United States Magistrate Judge for determination.

ANALYSIS

The plaintiffs initially sought an award **[*4]** of attorney fees in the amount of \$ 111,777.00 and an award of expenses in the amount of \$ 11,522.30, for a total of \$ 123,299.30. n1 Mem. in Supp. of Its Application for Payment of Reasonable Att'y Fees at 15-16.) In their reply memorandum, the plaintiffs have reduced their request to a total amount of \$ 98,450.68 after making certain adjustments. (Pls. Reply Mem. at 19.) In support of their application for attorney fees and expenses, the plaintiffs submitted the declarations of their

attorneys, Ted E. Corvette, a member of the Durham, North Carolina law firm of Moore & Van Allen PLLC (MVA), and Matthew Witsil, an associate at MVA, along with MVA's billing statement detailing the work performed by MVA in connection with this case, and the affidavit of John C. Speer, a partner in the Memphis law firm of Baker, Donelson Bearman & Caldwell, who served as co-counsel for the plaintiffs, along with Baker Donelson's billing statements.

- - - - - Footnotes - - - - -

n1 See, however, the plaintiffs' memorandum where they request a total of \$ 127,727, (Pls.' Mem. in Supp. of Its Application for Payment of Reasonable Att'y Fees at 5), and the plaintiffs' reply memorandum, where the total amount of fee and expense requests is \$ 123,127, (Pls.' Reply Mem. at 1.). The reason for the discrepancy is unclear.

- - - - - End Footnotes- - - - - [*5]

Columbian Rope objects to the amount requested by the plaintiffs for fees and expenses on the grounds that (1) the hourly rates requested by the plaintiffs are excessive, and the plaintiffs have failed to substantiate a reasonable hourly rate for this community; (2) Columbian Rope did not agree to pay expenses; and (3) the plaintiffs' request includes excessive charges and charges for unnecessary work. Columbian Rope asks the court to reduce the plaintiffs' request by approximately 75% to \$ 31,698.90. (Def.'s Resp. to Pls.' Mot. and Application for Payment of Reasonable Att'y Fees at 19.)

A. Calculation of Lodestar Amount

HN1 Section 285 of Title 35 governs attorney fees in a patent infringement case. It provides that "the court in exceptional cases may award reasonable attorney fees to the prevailing party." 35 U.S.C. § 285. However, this fee award is made pursuant to settlement rather than an "exceptional case" clause.

The Supreme Court in *Hensley v. Eckhart*, 461 U.S. 424 (1983) laid out general standards to follow in making awards of attorney fees under fee shifting statutes. HN2 In deciding what is a reasonable fee, the starting point [*6] is the determination of the "lodestar" amount, which is calculated by multiplying the number of reasonable hours expended by a reasonable hourly rate for legal services. *Id.* at 433.

1. Reasonable Hourly Rate

HN3 Under the lodestar method, a starting point for calculating fees is the determination of a reasonable hourly rate. The plaintiffs seek fees based on an hourly rate that varies according to each attorney's experience and qualifications. Columbian Rope objects to the plaintiffs' requested hourly rates for many MVA members (partners) as excessive and unreasonable, although it does not object to the MVA associates' rates.

HN4 The Supreme Court has recognized the community market rule as the proper way to determine a reasonable hourly rate. *Blum v. Stenson*, 465 U.S. 886, 895, n.11, 79 L. Ed. 2d 891, 104 S. Ct. 1541 (1984). The community market rule has the principal virtue of being the easiest way to cope with the "inherently problematic" task of ascertaining a reasonable fee in a situation where "wide variations in skill and reputation render the usual laws of supply and demand largely inappropriate" *Hadix v. Johnson*, 65 F.3d 532, 536 (6th Cir. 1995). [*7] In applying the community market rule, the court looks to rates for similar services in the community by attorneys with reasonably comparable skills. See *id.* "The

burden is on the fee applicant to produce satisfactory evidence--in addition to the attorney's own affidavits--that the requested rates are in line with those prevailing in the community" *Blum*, 465 U.S. at 895 n.11. Evidence may include affidavits of other attorneys, case precedents, and fee studies. See *Ottis v. Shalala*, 1994 U.S. Dist. LEXIS 16325, *18 (S.D. Mich. October 20, 1994).

The first inquiry is which "prevailing community rate" should apply: that of MVA's location in Durham, North Carolina, or that of the venue in the Western District of Tennessee. The court finds that Western Tennessee provides the prevailing rate, because that is where the case would have been tried. See, e.g., *Horace v. Pontiac*, 624 F.2d 765, 770 (6th Cir. 1980) and *Louisville Black Police Officers Org., Inc. v. Louisville*, 700 F.2d 268, 277-78 (6th Cir. 1982) (holding, in both cases, that ^{HNS} it was within the court's discretion to calculate fees based [*8] on prevailing hourly rate in the venue where the case was tried).

The plaintiff offers no extrinsic proof as to the current market rate for intellectual property attorneys in the Memphis community. It relies solely on affidavits provided by the MVA intellectual property attorneys and by its local counsel, Memphis attorney John C. Speer. Columbian Rope counters with a 2001 "Report of Economic Survey" by the American Intellectual Property Law Association Law Practice Management Committee (the "AIPLA") that shows high, low, median, and average market rates in the United States by geographic area. (Def.'s Resp. to Pls.' Mot. and App. for Payment of Reas. Att'y Fees at Ex. A.) Tennessee falls into the "Other Central" geographic category, while North Carolina falls into the "Southeast Metro" category. According to the AIPLA survey, the average hourly rate for partners in the 75th percentile, the highest percentile reported, in the "Other Central" category was \$ 250 for the year 2000, the latest year for which survey results are available. In addition, the Speer affidavit indicates that the prevailing rate in the Western District of Tennessee for a partner in the largest law firm in Memphis [*9] with 30 years' experience is \$ 275, rather than the \$ 300-320 that the plaintiffs seek for a partner in North Carolina with similar experience. The court finds therefore that the plaintiffs have not met their burden of showing that their requested rates for MVA partners are in line with those prevailing in the Western District of Tennessee. See *Blum*, 465 U.S. at 895 n.11.

Accordingly, taking into consideration the Speer affidavit, the AIPLA survey, and the attorney profiles submitted by the plaintiffs, the court concludes that the following are average reasonable hourly rates for each of the MVA partners during the time period they represented the plaintiffs:

Name	Experience	MVA Title and Requested Hourly Rate	AIPLA Equivalent Title and Hourly Rate	Reasonable Hourly Rate
Cohen	Admitted 1989	MVA Member \$ 205-220	Partner \$ 195/hour (25th percentile)	\$ 195/hour
Corvette	Admitted 1973	MVA Member \$ 265-270	Partner \$ 250/hour (75th percentile)	\$ 275/hour n2
Harlow	Admitted 1968; Admitted	MVA Member \$ 300-320	Partner \$ 250/hour (75th	\$ 275/hour

	USPTO		percentile)	
Johnston	Admitted	MVA Member	Partner	\$ 195/hour
	1992;	\$ 205-220	\$ 195/hour	
	Admitted		(25th	
	USPTO		percentile)	

[*10]

Because Columbian Rope does not object to the AIPLA's average calculation of \$ 160 per hour for associates, that rate is applied to all associates. Similarly, because Columbian Rope does not object to a paralegal rate of \$ 80 per hour, that rate will be used for MVA paralegal time. Baker, Donelson attorneys and paralegals will be compensated at the rates established by the Speer affidavit.

- - - - - Footnotes - - - - -

n2 The court finds \$ 275 to be a reasonable hourly rate for Corvette even though the rate is slightly higher than the rate actually billed by Corvette.

- - - - - End Footnotes - - - - -

2. Reasonable Hours Expended

HN6 Once the court has determined the appropriate hourly rate, the court must then determine what number of hours were reasonable. "The 'lodestar' method of calculation ... does not solve the problem of excessive hours." *Coulter v. Tennessee*, 805 F.2d 146, 150 (6th Cir. 1986). It is within the court's discretion to reduce the total hours if they seem unreasonable. The question is not whether a party prevailed on a particular **[*11]** motion, nor whether, in hindsight, the time expended was strictly necessary to obtain relief achieved; instead, the question is whether a reasonable attorney would believe the work to be reasonably expended in pursuit of success at the time when the work was performed. *Wooldridge v. Marlene Industries Corporation*, 898 F.2d 1169, 1177 (6th Cir. 1990); accord *Northcross v. Board of Education*, 611 F.2d 624, 636 (6th Cir. 1980).

HN7 Three very different kinds of issues can arise concerning excessive hours: (1) factual questions about whether the lawyer actually worked the hours claimed or is padding the account; (2) legal questions about whether the work performed is sufficiently related to the points on which the client prevailed as to be compensable; (3) mixed questions about whether the lawyer used poor judgment in spending too many hours on some part of the case or by unnecessarily duplicating the work of co-counsel.

Coulter, 805 F.2d at 150-51. **HN8** A court's determination on the factual issues will be upheld unless it is clearly erroneous. *Id.* at 151. A court's determination on the legal issues, i.e., questions **[*12]** of compensability, are reviewed for error. *Id.* A court's determination on the mixed issues, i.e., questions of judgment, will be upheld unless the court's interpretation of the profession's reasonable billing practices was arbitrary or irrational. *Id.* at 151, 152.

Columbian Rope challenges the total hours expended by the plaintiffs' attorneys on several grounds. The compensability issues are as follow: (1) whether the plaintiffs are entitled to fees attributed to "W.R. Grace" license issues, i.e., whether "W.R. Grace" issues were within

the scope of this litigation; (2) whether the plaintiffs are entitled to fees attributed to time spent after February 14, 2002, all of it allegedly spent "attempting to repudiate the settlement agreement"; (3) whether the plaintiffs are entitled to fees attributed to time spent preparing this fee application, which Columbian Rope alleges is "totally deficient" in supporting the reasonableness of the plaintiffs' attorney fees; (4) whether the plaintiffs are entitled to professional fees that accrued before the lawsuit was filed; and (5) whether certain billing entries, such as "file work" or "follow-up," are too vague to demonstrate [*13] the nature of the work for purposes of determining whether the time was reasonably expended.

In addition, Columbian Rope raises two issues concerning the plaintiffs' billing judgment: (1) whether certain billing items are redundant, with several attorneys billing for the same substantive work, and (2) whether time spent on some items was disproportionate to the work performed.

HN9 The applicant for attorney fees has the burden of demonstrating the reasonableness of hours, and the opposing party has the burden of producing evidence against this reasonableness. See *Blum*, 465 U.S. at 897; *Hensley*, 461 U.S. at 437. MVA, the applicant, relies on its billing statements and the declarations of its attorneys. In opposition, Columbian Rope has submitted a twenty-nine page item-by-item review of MVA's billing statements. The court now adopts the following analysis on each of Columbian Rope's compensability issues, and accordingly adjusts MVA's time records. n3

- - - - - Footnotes - - - - -

n3 A detailed summary of MVA's records, showing the reductions and the reasoning therefor, is attached as an Appendix to this ruling.

- - - - - End Footnotes - - - - - [*14]

a. Compensability of "W.R. Grace" License Issues

Columbian Rope alleges that "W.R. Grace" license issues are unrelated to this litigation, but adduces no evidence to support that claim. HN10 Allegations unsupported by evidence cannot justify a favorable ruling. See *United States v. Crescent Amusement Co.*, 323 U.S. 173, 184-85, 89 L. Ed. 160, 65 S. Ct. 254 (1944) (holding that factual findings "must stand or fall depending on whether they are supported by evidence"); *Anderson v. Bessemer City*, 470 U.S. 564, 573-75, 84 L. Ed. 2d 518, 105 S. Ct. 1504 (1984) (discussing the role of evidence in the "clearly erroneous" standard of appellate review). Nevertheless, the plaintiffs have withdrawn their requests for compensation on all "W.R. Grace" issues. (Pls.' Reply Mem. at 16.) Therefore, time spent on "W.R. Grace" license issues is not compensable.

b. Compensability of Time Spent after February 14, 2002

Columbian Rope alleges that this time was spent "attempting to repudiate the settlement agreement," and that it is outside the scope of this litigation. Columbian Rope adduces no evidence to support this allegation, nor to support its characterization [*15] of the plaintiffs' activities. Especially in light of the parties' extreme difficulty in determining whether a settlement agreement existed in the first place, let alone the terms thereof, see, e.g., Order Granting Defendant's Motion to Enforce Settlement Agreement, *Anglo-Danish Fibre Industries, Ltd. v. Columbian Rope Fiber*, Civil Case No. 01-2133GV (W.D. Tenn., June 21, 2002), the court is not persuaded that Columbian Rope has met its burden of proving that these charges are unreasonable. Therefore, the time spent after February 14, 2002, is compensable to the extent that it reflects reasonable billing judgment.

c. Compensability of Time Spent Preparing Fee Application

Columbian Rope alleges that, because the plaintiffs' fee application is "totally deficient" and the time spent preparing it is not documented, fees associated with the fee application are not compensable. (Def.'s Resp. to Pls.' Mot. and Application for Payment of Reasonable Att'y Fees at 16.) The court disagrees. Time spent preparing the fee application is compensable to the extent that it reflects reasonable billing judgment. *Coulter*, 805 F.2d at 151. The fee application provides hourly [*16] rates for each attorney and the hours expended by each attorney, for the case in chief as well as the fee application. (Pls.' Mem. in Supp. of Its Application for Payment of Reasonably Att'y Fees, Ex. B, Dec. of Ted E. Corvette at 5.) In addition, the plaintiffs have included in their reply brief a detailed analysis of services performed. (Pls.' Reply Brief, Ex. 1.) This information is sufficient to enable the court to calculate a lodestar amount.

Columbian Rope correctly observes, however, that ^{HN11}the total hours spent preparing a fee application are capped at three percent (3%) "of the hours in the main case when the issue is submitted on the papers without a trial." *Coulter*, 805 F.2d at 151. Because the court finds that the plaintiffs expended 287.74 reasonable hours in the main case, only 8.63 hours are compensable in association with fee agreement preparation.

Four attorneys worked on the fee application: approximately 50% of the reasonable hours were incurred by two associates at \$ 160 per hour. Approximately 50% of the reasonable hours were incurred by two partners at \$ 275 per hour. The 8.63 hours are divided proportionally, resulting in a limit of \$ 1,877.52 [*17] for preparing the fee application subject to reasonable billing judgment.

d. Compensability of Fees Accrued before Filing

Columbian Rope alleges that the plaintiffs are not entitled to professional fees that accrued before the complaint was filed. (Def.'s Resp. to Pls.' Mot. and Application for Payment of Reasonable Att'y Fees at 16.) The plaintiffs cite *Central Soya Co., Inc. v. Geo. A. Hormel and Co.*, 723 F.2d 1573, 1577 (Fed. Cir. 1983) for the proposition that ^{HN12}attorney fees include all services "in the preparation for and performance of legal services related to the suit." ^{HN13}The Supreme Court has held that attorneys' work, even if performed outside the traditional litigation context, is compensable as long as it is "necessary to the attainment of adequate relief for [the] client." *Pennsylvania v. Delaware Valley Citizens' Coun. for Clean Air*, 478 U.S. 546, 558, 92 L. Ed. 2d 439, 106 S. Ct. 3088 (1986). n4 A reasonable amount of pre-suit investigation and client communication is necessary before a competent attorney can identify the alleged wrong, identify which of his client's rights were infringed, and craft an appropriate claim for relief. [*18] Accordingly, pre-suit hours are compensable to the extent that they reflect reasonable billing judgment.

- - - - - Footnotes - - - - -

n4 Because this fee award is made pursuant to settlement rather than statute, this court follows the *Delaware Valley* standard. See *Knop v. Johnson*, 700 F. Supp. 1457, 1465 (W.D. Mich. 1988) (discussing the role of "fairness and equity" in a fee award determination for amicus curiae). Had the parties sought fees pursuant to 35 U.S.C. § 285, the result would be governed by statutory precedent instead. Compare, for example, *Anderson v. P&G*, 220 F.3d 449, 455-456 (6th Cir. 2000) (declining to award fees under ERISA statute when claim settled during administrative proceedings) with *Hanrahan v. Hampton*, 446 U.S. 754, 756-757, 64 L. Ed. 2d 670, 100 S. Ct. 1987 (1980) (approving the award of fees to civil rights plaintiffs who "vindicate rights" without "formally obtaining relief").

- - - - - End Footnotes- - - - -

e. Compensability of Vague Billing Entries

Columbian [*19] Rope argues that many of the plaintiffs' billing records are too vague for the court to tell whether the time was reasonably expended. (Def.'s Resp. to Pls.' Mot. and Application for Payment of Reasonable Att'y Fees at 15-16.) Specifically, Columbian Rope challenges the plaintiffs' claim to reimbursement for billing entries such as "file work," and "follow-up," as well as billing entries where the plaintiffs recorded that they "received a voicemail, drafted a memorandum, or conversed with another attorney without identifying the substance of their communications." (*Id.*)

HN14 Attorneys must "maintain billing time records that are sufficiently detailed to enable the courts to review the reasonableness of the hours expended." *Wooldridge*, 898 F.2d at 1176-1177. Where records are ambiguous, courts should not apply any presumption in favor of the party seeking the fee. *Id.* at 1176. To the contrary, entries that "provide little guidance in ascertaining the purpose of the work during the time claimed do not merit an award." *Black v. Lojac Enterps.*, 1997 U.S. App. LEXIS 17205 (6th Cir. 1997). See also *Reed v. Rhodes*, 934 F. Supp. 1492, 1520 (N.D. Ohio 1996) [*20] (refusing to evaluate the merits of vague time records).

The court has reviewed MVA's time records and agrees with Columbian Rope that the following descriptions are too vague for the court to assess the reasonableness of hours expended in association with them:

i. "File Work," "Work in File," or "Work On"

"File Work," "Work in File," and "Work On," without more, is too vague to show whether the hours expended are reasonable. See *Wooldridge*, 898 F.2d at 1176-1177 (declining to assess claims for "general services"). These billing entries are noncompensable.

ii. "Follow-Up," "Monitor Status," "Check Status," or "Check On"

Without any accompanying description of the tasks performed (e.g., a call, email, or office conference), these descriptions are too vague to show whether the hours expended are reasonable. See *Black v. Lojac Enterps.*, 1997 U.S. App. LEXIS 17205, *9-10 (6th Cir. 1997) (declining to award fees for activities such as "research," "pick-up," "revised form," and "office conference" when the activities were not more specifically identified). On the same principle, time entries for "receipt of" information or communications, without [*21] more, are too vague to merit an award.

iii. Conferences, Memoranda, Emails, Voicemails, Letters

Billing entries for conferences, memoranda, voicemail, emails, and letters, when the billing entries do not identify the subject matter of the communication, are too vague to show whether the hours expended are reasonable. See *Black*, 1997 U.S. App. LEXIS 17205, *9-10 (declining to award fees for "time entries [that] failed to even identify the general subject matter involved"). Under the same reasoning, "instruct associate," without more, is also too vague for the court to determine whether the hours spent on that activity were reasonably expended.

In this case, some of the vague entries discussed above stand alone. Others are mixed with non-vague billing entries. The plaintiff has not given the court any guidance about the proportional division of a mixed entry. Accordingly, the court strikes vague portions of mixed

entries on a straight percentage basis, e.g., if four activities are listed and one is too vague to merit an award of fees, the overall time for that entry is reduced by one-quarter.

f. Billing Judgment and Excessive Hours

Columbian Rope claims [*22] that, in an exercise of poor billing judgment, multiple attorneys recorded duplicate time for performing identical work and also, in many cases, recorded more time than the tasks reasonably required. (Def.'s Resp. to Pls.' Mot. and Application for Payment of Reasonable Att'y Fees at 15.) After reviewing the MVA billing records, the court agrees.

HN15 The court should exclude from its calculation hours that are "excessive, redundant, or otherwise unnecessary." *Hensley*, 461 U.S. at 433; *Northcross*, 611 F.2d 624; *Singer v. Machining Bd. of Mental Retardation*, 519 F.2d 748 (6th Cir. 1975). A court may deny compensation for redundant records on an item-by-item basis, *Coulter*, 805 F.2d at 152, or on an across-the-board percentage basis, *Hudson v. Reno*, 130 F.3d 1193, 1209 (6th Cir. 1997). A court denying compensation for excessive hours, i.e., time disproportionate to the tasks, must identify the hours and state why they are being reduced. *Northcross*, 611 F.2d at 637. These rules apply to the following time entries:

i. Redundant Meetings, Calls, and Conferences

HN16 Interoffice conferences [*23] are the type of "inefficiency and duplication of services" that may occur in cases where more than one attorney is used." *Schultz v. Amick*, 955 F. Supp. 1087, 1115 (N.D. Iowa 1997) (internal citation omitted). When multiple attorneys have billed for overlapping meetings, calls, or conferences, the court will permit full reasonable hourly remuneration for the attorney billing at the highest rate. One additional attorney, billing at an equal or lower rate, will be entitled to one-half his reasonable hourly remuneration. The calculation will be made by reducing his time by one-half of the overlapping hours. More than two attorneys' hours in a meeting, call, or conference are non-compensable.

ii. Redundant Research, Review, or Drafting

These duplications most often appear in partner/associate pairs. n5 HN17 Naturally it is within the profession's reasonable billing practice for a partner to guide a less experienced attorney in a task. However, "in a complex matter ... a more experienced attorney could perform the work in less time than an inexperienced attorney." *Ottis*, 1994 U.S. Dist. LEXIS 16325 at n.1. Accordingly, the court will permit full reasonable [*24] hourly remuneration for the attorney who is billing at the highest rate, one-half the reasonable hourly remuneration for the attorney who is billing at the lower hourly rate, and no remuneration for additional attorneys performing redundant work.

----- Footnotes -----

n5 Examples of duplicate activities billed separately by each attorney include the following:

12/05/2000 - Review and analysis of letter from Columbian Rope counsel by both Harlow and Witsil.

01/29/2001 - Review, instruction, and analysis of discovery rules by both Harlow and Slaughter.

03/29/2001 - Review of Columbian's motion to extend time by both Harlow and Slaughter.

04/25/2001 - Review and analysis of Columbian's answer and counterclaim by both Harlow and Slaughter.

05/21/2001 - Review of court notice by both Harlow and Slaughter.

06/07/2001 - Review of court scheduling notice by Harlow, Corvette, and Slaughter.

07/23/2001 - Review of court scheduling order by Harlow, Corvette, and Slaughter.

08/15/2001 - Review of correspondence and enclosures by both Harlow and Witsil.

08/21-23/2001 - Review of file history on client patent by both Harlow and Witsil.

09/10/2001 - Revisions to draft letter by both Harlow and Witsil.

- - - - - End Footnotes- - - - - **[*25]**

In addition, on December 11, 2000 and again on December 13, 2000, MVA's paralegal performed the same work twice, that is, printing out Columbian Rope's entire website. (Def.'s Resp. to Pls.' Mot. and Application for Payment of Reasonable Att'y Fees at 15.) Because the plaintiffs submitted no justification for the duplication, the December 11, 2000 entry is stricken.

iii. Excessive Hours

HN18 When the allegation is that attorneys spent too much time on a particular task, the inquiry is whether they complied with the reasonable billing practices of the profession. *Coulter*, 805 F.2d at 151. This requires a fair assessment of the needs of the particular case. *Id.* at 152.

MVA, in its memorandum, divides the underlying case into five "phases," which assists the court in assessing the needs of the case. n6 In addition, the court assesses the propriety of MVA's hours spent preparing this application for fees. After careful review of the billing records, the court finds that a number of billing entries are disproportionate to the tasks at hand.

- - - - - Footnotes - - - - -

n6 Phase 1 (June-August 2000) is characterized as an "investigation phase leading up to the cease and desist letter." Phase 2 (September-December 2000) is characterized as an "initial negotiation phase leading up to the preparation of a complaint." Phase 3 (January-February 2001) is characterized as a period "leading up to the filing of" the complaint. Phase 4 (March-June 2001) is identified as the "pleadings phase," from the complaint's filing through the defendant's reply, and both parties' initial Rule 26 disclosures. Phase 5 covers July 2001 through February 2002 and includes the settlement agreement signed on November 18,

2002.

----- End Footnotes----- [*26]

First, MVA, in its original Application for Fees, apparently used a minimum billing increment of two-tenths of an hour (.20), with additional increments of one-tenth of an hour (.10) added thereafter. ^{HN19} The court looks with disfavor on minimum billing increments because they result in padding of time and do not accurately reflect the actual time required to perform a particular service. Padding hours demonstrates lack of billing judgment, and hours may be cut for padding. See *Northcross*, 611 F.2d at 636. Review of the originally submitted billing records showed 38 records (eleven percent of the total records) composed solely of the .20 minimum increment. Another 56 records (sixteen percent of the total records) were composed solely of the .20 minimum increment plus another tenth of an hour.

Because most of these entries reflect brief office conferences, voicemails, and emails, the court finds these records reflect significant padding. Many already have been struck as vague. Those that remain now are reduced by 50% each to compensate for padding. This reduction affects 16 of the .20 increment entries and 30 of the .30 increment entries, for a total reduction of 7.15 [*27] hours. n7

----- Footnotes -----

n7 MVA "wrote down" several of these entries in Exhibit 1 of its Reply Memorandum. Because these changes tend to be in line with the court's own adjustment for padding--e.g., several .20 increments submitted in the original Application for Fees were "written down" by MVA to .10 increments in the Reply Memorandum--the court relies on the original exhibits.

----- End Footnotes-----

Next, MVA reports significant associate attorney time spent on legal research projects. For example, MVA reported at least nine associate hours in November and December 2000 spent on seeking analogous cases for direct and contributory patent infringement. MVA reported at least 20 associate hours in January and February 2001 researching patent infringement remedies. MVA also reported over 13 associate hours researching legal standards for the fee application. ^{HN20} "Using less experienced attorneys at a lower hourly rate actually may increase the total number of hours expended ... depending on the efficiency of the younger attorneys." *Ottis*, 1994 U.S. Dist. LEXIS 16325 [*28] at n.l. Excessive hours are a particular problem when firms use legal research to train relatively new associates. *Id.*

In this case, litigation was in the earliest stages, and the case was resolved through settlement. None of the researched issues appears particularly novel for a firm that regularly practices intellectual property litigation. Accordingly, the court finds that the research time for these three issues is excessive and reduces the associates' research time on these projects by 50%.

Next, in November and December, 2002, MVA billed 26.7 partner-level hours for Corvette's work and 1.6 partner-level hours for Harlow's work drafting and revising documents associated with the plaintiffs' fee application, in addition to 24.9 hours of associates' time. The total amount of attorney fees sought by the plaintiffs for preparing the fee application is \$ 12,423. n8 The fee application consists of a sixteen-page memorandum, time statement printouts, pre-printed attorney profiles, and two attorney declarations that summarize the printout information. The court simply does not see how experienced partners in a law firm could reasonably spend over 28 hours preparing this application, [*29] especially when

supplied with three days' worth of associate research and a full set of billing printouts. Accordingly, Corvette's 26.7 hours are reduced by 75% to 6.68 hours. n9

- - - - - Footnotes - - - - -

n8 In its Reply Memorandum, MVA reduced its request for time on preparing the Application for Fees to 52.2 total hours and its request for fees to \$ 12,423. (Pls.' Reply Mem. in Supp. of its App. for Payment of Reas. Att'y Fees at 2-3, Ex. 1.) These calculations reflect that revised request.

n9 The fee petition is also subject to the 3% cap discussed supra at p. 11. Even after the hours claimed are reduced for excessive billing, the total amount of fees attributable to preparing the fee petition still exceed the 3% cap. Accordingly, the total amount of the award for attorney fees for preparing the fee petition is \$ 1,877.52.

- - - - - End Footnotes- - - - -

Finally, a review of MVA's remaining time entries show many that are simply disproportionate to the work performed. For example:

On July 25, 2002, MVA billed 3.10 hours (190 minutes) for a telephone conference, **[*30]** cover letter, and packaging of samples for laboratory testing.

On July 28, 2001, MVA billed .40 hours (24 minutes) for responding to an email and canceling a flight reservation.

On August 7, 2001, MVA billed .40 hours (24 minutes) for a telephone call to the lab to check the status of sample testing.

On September 20, 2000, MVA billed 1.20 hours (80 minutes) for reading a website, leaving a voicemail, and sending an email.

On September 24, 2000, MVA billed 1.10 hours (70 minutes) for checking two online databases and comparing the results.

On February 20, 2001, MVA billed 1.30 hours (80 minutes) for drafting a pro hac vice motion and order, which are usually one-page documents.

These items are difficult to calculate on a line-item basis, because MVA's multiple attorneys are billing at different rates and likely have different levels of experience, skill, and efficiency. In lieu of a line-by-line reduction, therefore, the court reduces the total reasonable fees by 5%, for a total of \$ 3,235.88, in recognition of disproportionate entries not otherwise adjusted.

B. Adjustment of the Lodestar Amount

~~HN217~~ After determining the lodestar amount, the court in its discretion may **[*31]** adjust

the award upward or downward to assess a reasonable award. *Hensley*, 461 U.S. at 434. The most important factor is the "results obtained." *Id.* Because this case was resolved through settlement, in which both sides were represented by counsel and in which both sides participated, the court finds that a discretionary lodestar adjustment is inappropriate.

C. Expenses

Columbian Rope denies an obligation to pay the plaintiffs' out-of-pocket expenses. (Def.'s Resp. to Pls.' Mot. and Application for Payment of Reasonable Attorney Fees at 18.) Although ~~HN22~~ an award of attorney fees made pursuant to statute may include reasonable expenses, see, e.g., *Central Soya*, 723 F.2d at 1578, the court finds no such award is appropriate in this case. Here, the fee award is made pursuant to an agreement, not necessarily pursuant to a statute. During the negotiation of the settlement agreement, the parties were represented by competent litigators. Counsel for plaintiffs knew that they had incurred expenses on the file and had an itemized list available to them, as demonstrated by the billing records provided to the court. The parties had ample opportunity **[*32]** to explicitly provide for payment of expenses in their settlement agreement during the prolonged negotiations over settlement terms. They did not do so. The parties' settlement agreement simply provides for "attorney fees." It does not provide for "attorney fees and expenses," and it is unclear from the letters supporting the settlement agreement that either party contemplated payment of expenses. See Order Granting Defendant's Motion to Enforce Settlement Agreement, *Anglo-Danish Fibre Industries, Ltd. v. Columbian Rope Fiber*, Civil Case No. 01-2133GV (W.D. Tenn., June 21, 2002) (declaring the terms of the settlement agreement); Def.'s Reply Brief in Supp. of Mot. to Enforce the Settlement Agreement at Exs. 1-5, *Anglo-Danish Fibre Industries, Ltd. v. Columbian Rope Fiber*, Civil Case No. 01-2133GV (W.D. Tenn., June 21, 2002) (containing the letters with settlement terms referenced in the June 21, 2002 Order). Accordingly, the award of expenses is denied with one exception. The plaintiffs have included the attorney fees incurred by Baker, Donelson as an expense item. Baker, Donelson's attorney fees will be reimbursed, but the actual out-of-pocket expenses incurred by Baker, **[*33]** Donelson. will not be reimbursed.

CONCLUSION

For the foregoing reasons, the plaintiff is awarded a total of \$ 66,707.66 in reasonable attorney fees and \$ 0 in expenses. Specific reductions in hours are listed on an appendix attached to this ruling.

IT IS SO ORDERED this 28th day of January, 2003.

DIANE K. VESCOVO

UNITED STATES MAGISTRATE JUDGE

JUDGMENT IN A CIVIL CASE - FILED 03 FEB 11; entered 2/11/03

DECISION BY COURT. This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS SO ORDERED AND ADJUDGED that in accordance with the Order on Plaintiffs' Request for Attorney Fees entered on January 30, 2003, judgment is hereby entered for the plaintiffs, Anglo-Danish Fibre Industries, Ltd. and Cemfiber A/S, and awarded a total of \$ 66,707.66 in attorney fees and \$ 0 in expenses.

APPROVED:

JULIA S. GIBBONS

**UNITED STATES CIRCUIT JUDGE
 (Sitting by Designation)**

ATTACHMENT

Dates of Service	Atty.	Description of Services	Billed Hours
06/15/2000	DAH	Memo to Linsner	0.30
06/15/2000	DAH	File work	0.30
06/30/2000	DAH	Voicemail to Linsner	0.20
07/05/2000	DAH	Voicemail from Linsner. Email to Linsner	0.30
07/24/2000	DAH	Voicemail from W.R. Grace; telephone conference with Michael from W.R. Grace; file work; outline chain of possession formalities	0.80
07/25/2000	DAH	Receipt of samples re potential infringement by Columbian Rope; outline tasks regarding testing of fiber and potential cease and desist letter; file work	1.00
07/25/2000	MWI	Columbian fibers--Office conference with Harlow; phone conference with Vitarelli of MAS labs to get quote for samples; preparing ltr and sending samples to MAS labs.	3.10
07/28/2000	DAH	Receipt of information on infringer; instruct associate	0.30
08/07/2000	MWI	Call to MAS Laboratories to check status of sample being tested	0.40
08/17/2000	MWI	Completion of draft cease and desist letter and report summary for Harlow	0.50
08/16/2000	MWI	Review of test report on samples and comparison with fiber patent. Phone conference with Viterelli of Material Analytical Services lab to discuss the test and return of the sample in original packaging. Preparation of draft cease and desist letter for Harlow.	2.80
08/16/2000	MGJ	Review fax from Mitchell re expiration of patent and respond with date of expiration.	0.30
08/24/2000	DAH	Follow-up on status of test results.	0.30
08/25/2000	DAH	Review independent analysis report;	

		desist letter; letter to Linsner	0.80
08/29/2000	DAH	Receipt of further instructions; finalize cease and desist ltr and send out; file work; ltr to Linsner	1.00
09/18/2000	DAH	Check for any response to cease and desist letter; exchange of email with Linsner; analysis re future action. Check on location of infringing company; instruct associate on follow-up matters.	0.80
09/18/2000	MWI	Office conference with Harlow. Review of file to identify sales locations.	1.00
09/19/2000	DAH	Further analysis; memo to Linsner re options.	1.00
09/20/2000	DAH	Analysis; instruct associate on follow-up. Follow-up. File work	0.90
09/20/2000	MWI	Review of Columbian Rope products on web page. Phone call to President Stephen Ludt, to whom the cease and desist letter was sent; left voice mail. Email summaries to Harlow.	1.20
09/22/2000	DAH	File work	0.30
09/25/2000	DAH	Follow-up on Columbian Rope.	0.20
09/25/2000	MWI	Phone conference with Ludt of Columbian Rope; he requested we provide a copy of the patent to him, as we offered. Drafted facsimile to him.	0.80
09/28/2000	MWI	Phone call from Bob Weilacher of Smith Gambrell in Wash. D.C., patent attys for Columbian Rope	0.40
09/28/2000	DAH	Review report on patent counsel for Columbian Rope; email to Craig Linsner	0.40
10/13/2000	DAH	File work	0.20
10/16/2000	DAH	Office conference with Witsil re Columbian Rope; email to Linsner	0.40
10/16/2000	MWI	Office conference with Harlow. Phone conference with Weilacher, checking status of response to cease and desist letter.	0.50
10/18/2000	MWI	Email correspondence with Harlow re ADFIL's ownership of the fiber patent	0.20
10/19/2000	MWI	Email correspondence to counsel for Columbian Rope responding to his	

		assignee named on the patent and ADFIL.	0.20
10/24/2000	DAH	Review emails re Columbian Rope. Inquiry from Irwin Mitchell re US Patent # 5,399,195, check USPTO database; instruct associate	0.80
10/24/2000	SDT	Search dialog database 345 for Pat. NO. 53199195; Review database search results; review USPTO database search results; Office conference re differences in database search results; Perform secondary search in Dialog database 653 for Patent No. 53199195; Prepare e-mail response to foreign counsel summarizing database search results and explaining inconsistency with USPTO website; fax Dialog database results to Irwin Mitchell	1.10
10/25/2000	DAH	Office conference with Matt Witsil	0.20
10/25/2000	MWI	Email correspondence with Anneliese Aulton of Irwin Mitchell requesting information on the relationship between Adfil, Danaklon, and Cemfiber	0.20
11/01/2000	DAH	Monitor situation with Columbian Rope	0.20
11/01/2000	MWI	Email correspondence with counsel for Columbian Rope.	0.40
11/06/2000	MWI	Office conference and email correspondence with Harlow re status of response from Columbian Rope counsel to cease and desist letter.	0.40
11/06/2000	DAH	Exchange email with Linsner; review status and emails with counsel for Columbian Rope; analysis of Columbian Rope website and its products. Analysis re status and strategy; memo to Linsner re same	2.80
11/09/2000	DAH	Follow-up and email.	0.30
11/10/2000	DAH	File work.	0.20
11/17/2000	DAH	Telephone conference with Linsner; file Work	0.40
11/17/2000	MWI	Email correspondence with Harlow summarizing status and discussing	

11/20/2000	MWI	Office conference with Harlow. Preparation of chronology of contact w/ Columbian Rope and their atty for his use.	1.00
11/20/2000	DAH	Review timeline of prior communications with counsel for Columbian rope; analysis re steps to be taken; check on potential local counsel for bringing suit in Mississippi. Review website; email to potential local counsel. Analysis re venue issues	2.20
11/21/2000	MWI	Office conference with Harlow re letter to counsel for Columbian Rope.	0.40
11/21/2000	ABC	Conference regarding issues of venue and jurisdiction for filing complaint	0.50
11/21/2000	DAH	Review patent claims and engineering test report on product. Further review and analysis of Columbian Rope website and their products and specifications; prepare and send "drop dead" letter to counsel for Columbian Rope. Telephone conference with ADFIL offices; analysis of potential jurisdictions for bringing a patent infringement against Columbian Rope; preparation and sending of analysis memorandum to Linsner re products and infringement.	6.00
11/22/2000	DAH	Office conference with Ted Corvette re selection of venue for patent infringement lawsuit	0.30
11/22/2000	DAH	Review credit report on Columbian Rope; prepare and send memo on same; check further on jurisdiction and venue; memo for Linsner re patent marking	2.00
11/22/2000	DAH	Order credit report on Columbian Rope; check on potential local counsel for Memphis; telephone conference with Robert Walker. Telephone conference with ADFIL office; further emails to Linsner; further review of product specification sheets for Columbian	

11/27/2000	MWI	Office conference with Harlow re potential for infringement of multiple Columbian Rope products	0.40
11/27/2000	DAH	Exchange of emails with Linsner re several issues; further analysis of Multi-Plus product; file work re documents. Pull document; review patent license agreement with W.R. Grace; review supply agreement with W.R. Grace & Co.; email memo to Macklin; further analysis re Multi-plus product; email memo to Linsner re same.	4.60
11/28/2000	TEC	Office conference with Harlow re venue and jurisdiction issues	0.30
11/28/2000	DAH	Email to Linsner; review claims of '195 patent re method claims, product claims, and product by process claims. Work on logistical issues, office conference with Ted Corvette re same. Further exchange of email with Macklin and Polterick re product testing and re patent marking; review fax of patent marking on bags.	3.20
11/29/2000	ABC	Review and revise nonwaiver agreement for Columbian Rope counsel.	0.30
11/29/2000	TEC	Office conferences with Harlow and Witsil re waiver of privilege by Columbian Rope attys.	0.80
11/29/2000	MWI	Phone call from Weilacher, counsel for Columbian Rope. Email to Harlow, with draft of provisions for nonwaiver of attorney-client privilege requested by Weilacher. Office conference with Corvette. Response to Weilacher asking for him to provide details of what he wants.	1.40
11/29/2000	DAH	Work on draft complaint; logistics; respond to call from counsel for Columbian Rope.	3.20
11/30/2000	DAH	Analysis re potential for contributory infringement and inducing infringement; instruct associate on issues for research on infringement	

		review VE holdings case; email exchange with counsel.	2.60
11/30/2000	MWI	Office conference w/Harlow. Research for cases w/ respect to direct infringement, contributory infringement that are factually analogous to the infringement by Columbian Rope.	5.60
12/01/2000	TEC	Work on patent infringement file organization with Harlow and Rosenblatt-Farrell.	0.40
12/01/2000	MWI	Drafting email memorandum to Harlow re multiple bases for infringement by Columbian Rope.	1.60
12/01/2000	DAH	Review research memo on direct infringement issues; email re same; analysis re prior infringers on fiber count issue; documents re same.	2.60
12/04/2000	DAH	Follow-up on counsel for Columbian Rope. Review memo on contributory infringement and inducing infringement; office conference with associate re same	0.80
12/04/2000	MWI	Drafting analysis on contributory infringement and active inducement of infringement. Office conference w/ Harlow discussing same.	3.60
12/04/2000	NFR*	Review file and subdivide infringement matters.	6.50
12/05/2000	DAH	Review response from counsel for Columbian rope; analysis of same; review analysis by associate re test results and patent claims.	1.00
12/05/2000	MWI	Review and analysis of letter from Weilacher, atty for Smith. Gambrell, re Columbian Rope's bases for asserting non-infringement.	2.90
12/06/2000	MWI	Office conference with Harlow re his direction for preparation of a response letter and a memo analyzing Columbian rope's points in ltr from counsel. Beginning on letter and memorandum.	0.40
12/06/2000	DAH	Outline response to counsel for Columbian Rope; office conference w/	

12/06/2000	NFR	Finish reviewing file and subdividing infringement matters; Create reference chart for Harlow	1.50
12/08/2000	DAH	Review and revise letter to counsel for Columbian Rope; review analysis of memo on infringement issues; email to Linsner; additional email	2.20
12/08/2000	MWI	Completion of letter and memorandum with analysis in response to letter asserting non-infringement from Columbian Rope counsel dated Dec.. 5th. Phone conference with Harlow.	4.40
12/11/2000	MWI	Phone conference w/Harlow re revisions to cease and desist letter. Preparing email to Harlow.	0.50
12/11/2000	NFR	Office conference with Harlow re web-site; Print out complete Columbian Fiber website (www.fibersource.org); Prepare affidavit.	1.00
12/11/2000	DAH	Telephone conference with Linsner; instruct paralegal on affidavit re Super 76 product et al. Further substantive revisions to cease and desist letter; finalize letter and sent to counsel for Columbian Rope	2.60
12/13/2000	NFR	Office conference with Harlow regarding affidavits and web-site print out; Revise affidavit from December 11; Office conference with information technology specialist regarding print quality; Print out complete Columbian fiber source website (www.fibersource.org) and prepare additional affiavits.	2.10
12/13/2000	DAH	Further analysis re strategy for negotiating w/counsel. Voice mail to counsel for Columbian Rope. Review draft affidavit of paralegal and instruct re revisions; telephone conference with counsel for Columbian Rope; memo to Linsner.	2.70
12/14/2000	DAH	File work	0.40
12/15/2000	DAH	File work.	0.20
01/03/2001	MWI	Office conference with Harlow discussing lack of response from	

		of complaint.	0.20
01/03/2001	JES	Office conference with Harlow re background on the patent infringement and drafting complaint.	0.80
01/03/2001	DAH	Analysis; office conference with Witsil; memo to Linsner. Outline issues for drafting of complaint; office conference with Slaughter.	2.60
01/04/2001	DAH	Review memo on ADFIL domain name; check website office; conference with Slaughter re draft complaint; email to Linsner.	0.80
01/05/2001	DAH	Review of first draft of complaint; analysis; office conference with Slaughter re draft complaint. File work.	1.60
01/05/2001	JES	Review of correspondence with opposing counsel and further review of the files; work on complaint; office conference with Harlow re complaint and infringement issues.	5.20
01/05/2001	JES	Review of sample complaint, patent at issue, and Columbian Rope website; familiarize with the files; draft complaint.	7.30
01/08/2001	SDT	IP due diligence search of online database for Patent; Office conference re search results.	0.60
01/08/2001	DAH	Voice mail from Linsner; return call; email to Linsner. Prepare for telephone call to counsel for Columbian Rope; telephone conference with Weilacher; review memorandum.	1.40
01/08/2001	JES	Review of memo and correspondence related to case background; work on complaint; review of VE holding case re patent infringement and venue; office conferences with Thomas re corporate status and chain of title dialog search for the patent at issue; review of materials related to lost profits damages calculations in patent infringement suits.	6.50
01/09/2001	DAH	Telephone conference with Linsner;	

01/12/2001	DAH	Telephone conference with Linsner re filing of patent infringement lawsuit.	0.40
01/12/2001	JES	Further work on complaint, including creating two additional versions, one with ADFIL and Cemfiber as plaintiffs, and one with ADFIL, Cemfiber and W.R. Grace as plaintiffs	1.80
01/15/2001	DAH	Telephone conference with James Love re patent litigation; file work.	0.70
01/16/2001	DAH	Analysis re options on complaint.	0.30
01/16/2001	JES	Review of past correspondence by Witsil related to cease and desist letters and response by opposing counsel; revisions to complaints.	0.50
01/19/2001	DAH	Review and revise draft complaint; instruct associate; check on local counsel; telephone conference with Baker DONELSON law firm; letter to Linsner. Office conference with associate re W.R. Grace; further revisions to draft.	2.40
01/19/2001	JES	Additional updates to Complaints; research and draft memo re standing in patent infringement issues, including exclusive licensee issues	3.50
01/22/2001	DAH	Review memorandum re joining of W.R. Grace as exclusive licensee as co-plaintiff in lawsuit; office conference with associate re same. Analysis re exclusive license.	0.80
01/22/2001	JES	Review of license to W.R. Grace to examine standing issues and determine allocations of damage awards; research and update on memo re standing for licensees.	1.50
01/24/2001	DAH	File work. Memo to Linsner.	0.60
01/25/2001	DAH	Telephone conference with Linsner.	0.30
01/29/2001	JES	Review Western District of Tennessee Local Rules and Federal Rules of Civil Procedure, focusing on discovery issues such as deadlines and initial disclosures required; office conference with Harlow re discovery and on researching memo re damage theories and standards for obtaining treble damages and attorney	

01/29/2001	DAH	File work; check re local counsel; email; voicemail to John Speer; letter to John Speer re draft complaint and input. Instruct associate re local discovery rules; further revisions to draft complaint; analysis; assessment of damages and attorney fees. Further analysis re potential for preliminary injunction and/or partial summary judgment on liability.	3.00
01/30/2001	DAH	Voicemail from John Speer. Telephone conference with John Speer; memorandum to associate. File work.	0.90
01/30/2001	JES	Research and draft memo on patent infringement damages remedies, including damages theories and standards for increased damages and attorney's fees.	4.80
01/31/2001	JES	Research and draft memo on patent infringement damages remedies, including damages theories and standards for increased damages and attorney's fees.	3.20
02/01/2001	JES	Further research and draft memo on patent infringement damages remedies, including damages theories and standards for increased damages and attorney's fees.	2.70
02/02/2001	JES	Research and draft memo on patent infringement damages remedies, Including damages theories and Standards for increased damages and attorney's fees.	6.00
02/05/2001	JES	Research and draft memo on patent infringement damages remedies. including lost profits, established royalties, and reasonable royalties, and standards for increased damages and attorney's fees; further review of AIPLA article on damages.	3.30
02/07/2001	DAH	Review changes to draft Complaint proposed by local counsel; review proposed engagement letter from local counsel; letter to Linsner; letter to John	

02/14/2001	DAH	Exchange of email on W.R. Grace situation.	0.30
02/15/2001	JES	Office conference with Harlow re proceeding with Complaint against Columbian Rope without W.R. Grace as plaintiff; locate marked up Complaint to revise for filing	0.20
02/15/2001	DAH	Instruct associate regarding revisions to the Complaint; review and analysis of memorandum on damages and attorney fees.	1.00
02/16/2001	JES	Office conference with Harlow re damages issues, specifically notice requirements and theories of recovery, and to assemble letter to client for information on profit margin and how to best determine from infringer their amount of infringing sales.	0.30
02/16/2001	DAH	Work on damages issues and instruct associate on clarifying research on these issues.	0.50
02/19/2001	JES	Work on additional updates to complaint and review of license agreement with Grace; work on getting pro hac vice information.	1.20
02/19/2001	DAH	Review draft complaint; email to Linsner. Review license agreement and supply agreement re rights and obligations re patent infringer; voice mail message to counsel fro W. R. Grace. Review patent claims and read same against the complaint; make final revisions; telephone conference with John Speer re filing and service; instruct associate on motion pro hac vice.	2.20
02/20/2001	DAH	Memo to local counsel; exchange of email on motion to admit pro hac vice.	0.40
02/20/2001	JES	Obtain information on motion to appear pro hac vice and provide to Harlow; review sample Motion and order for pr	

		admit pro hac vice and related orders	1.30
02/21/2001	JES	Review correspondence from local Counsel; provide local counsel with complaint exhibit.	0.20
02/21/2001	DAH	Follow-up on complaint. File work.	0.70
02/22/2001	DAH	Voice mail message from counsel for Columbian Rope.	0.30
02/22/2001	JES	Work on letter to ADFIL for information related to their business operations and on how we can structure questions to get information from the infringer on damages; further research on issues of lost profits and notice for willful infringement.	2.90
02/23/2001	DAH	Voicemail message to counsel for Columbian Rope. Review supplemental memo on constructive notice and damages issues. File work.	1.30
02/26/2001	DAH	Email update to local counsel; email update to James Love; email update to Linsner. File work.	1.30
02/28/2001	DAH	Review pleading; letter to Linsner; email to check status of summons.	0.40
03/05/2001	DAH	Email to local counsel regarding discovery issues.	0.30
03/06/2001	JES	Office conference with Harlow re Rule 26 disclosures, research on judge's patent decisions, and motions for pro hac vice; update of motions for pro hac vice.	0.30
03/06/2001	DAH	Voice mail from John Speer; voicemail to John Speer; email to Linsner; extensive telephone conference with John Speer re Judge Gibbons, Rule 26(f) conference, discovery and local rules. Instruct associate on pro hac vice motions, survey of Judge Gibbons decisions in patent matters, and preparations for Rule 26(f) disclosures	2.40
03/07/2001	JES	Review of information for TN counsel related to Judge Gibbons' Rule 26 disclosures; research on Judge Gibbons' case decisions.	2.60
03/08/2001	DAH	Office conference with associate	0.20

		paralegal; finish and send motions for pro hac vice.	0.30
03/12/2001	DAH	Exchange of email on service of defendant; report to Linsner re service of complaint and status.	0.50
03/12/2001	JES	Review correspondence re service and motions for pro hac vice; obtain info on certificates of good standing for pro hac vice; review of TN local rules on initial attorney conference and initial disclosures; work on letter to client re additional info to calculate damages caused by defendant; correspondence to Harlow re patent case handled by Judge Gibbons, the judge assigned in the present case.	3.20
03/16/2001	DAH	Update on service of the Complaint and Summons.	0.20
03/26/2001	DAH	Exchange of emails re extension of time; exchange of emails re opposing counsel; check out opposing counsel	0.80
03/28/2001	DAH	Letter to Linsner	0.30
03/29/2001	JES	Review opposition's Motion and related materials to extend time; file organization.	0.30
03/29/2001	DAH	Review defendant's Motion to extend Time and its supporting documents; research new defense counsel for Columbian Rope	0.60
04/03/2001	DAH	Review order extending time signed by Judge Gibbons; docket time for answer; check background on Judge Gibbons.	0.50
04/05/2001	DAH	Telephone conference with Linsner re status	0.30
04/06/2001	DAH	Review additional fillings.	0.30
04/15/2001	DAH	Analysis re status, opportunity for settlement and strategies therefore; file work.	1.40
04/16/2001	DAH	Further analysis regarding timing.	0.40
04/23/2001	DAH	File work; letter to Linsner.	0.30
04/24/2001	DAH	Exchange of email re status, expected answer, etc.	0.20
04/24/2001	JES	Telephone conference with Harbinson re Columbian Rope's Answer and	

		Counterclaim.	0.50
04/25/2001	JES	Work on reply to Counterclaim	2.40
04/25/2001	DAH	Review email notice; review and analysis of answer and counterclaim filed by Columbian Rope; letter to Linsner; prepare draft of reply to counterclaim; letter to local counsel in Memphis.	3.20
05/04/2001	JES	Office conference with Harlow re changes to reply to Counterclaim; revise reply.	1.00
05/04/2001	DAH	Revisions to draft Reply to Counterclaim; office conference with Slaughter re same	1.20
05/07/2001	DAH	Final revisions to draft Reply to Counterclaim	1.10
05/10/2001	DAH	File work	0.30
05/11/2001	JES	Telephone conference with Harbinson w/ local counsel in TN re Reply to Counterclaim; review and input revisions made by Speer, TN local counsel.	1.00
05/14/2001	DAH	Review and approve final changes to reply to Counterclaim; instruct associate re same. Follow-up	0.60
05/14/2001	JES	Review of FRCP filing deadlines; final review and submission to TN local counsel of Reply to Counterclaim; follow-up to verify filing.	0.60
05/14/2001	DAH	Analysis; file work; office conference with Ted Corvette	0.80
05/18/2001	TEC	Office Conference with Harlow re pro hac vice admission in ADFIL v. Columbian Rope infringement action in Memphis; office conference with Slaughter re preparation of pro hac vice forms.	0.30
05/18/2001	JES	Prepare Motion and Order Pro Hac Vice for Mr. Corvette	0.40
05/21/2001	DAH	Review scheduling order from the Judge; letter to Linsner re same.	0.30
05/21/2001	JES	Review of Court's Notice of Setting Scheduling Conference and review of rules related to 26abl disclosures, 26f conferences and 16b conferences	0.40

		correspondence w/ Harlow re docketing matters related to Order setting Scheduling conference.	0.50
05/29/2001	DAH	Office conference with Slaughter re Rule 26(f) disclosures etc., telephone Conference with counsel for Columbian Rope re upcoming scheduling Conference w. Judge, re discovery parameters, and re opportunities for settlement; office conference w/Corvette re pretrial conference issues. Email Linsner and to update on status and settlement discussions with counsel for Columbian Rope.	1.30
05/29/2001	TEC	Office conference with Slaughter	
		preparing for Rule 26(a)(1) conference; telephone conference with Speer in Memphis re initial attorneys conference and docket status.	2.00
05/29/2001	JES	Work on Rule 26 (a) (1) disclosures; office conference with Mr. Corvette re scheduling conference and other case issues.	5.90
05/30/2001	DAH	Office conference with Ted Corvette re discovery period, etc. Analysis re timing of potential Markman hearing.	0.50
05/30/2001	TEC	Work on draft rule (f) Order; Rule 26(f) telephone conference with Dale Lischer attorney for Columbian Rope Company; office conference w/ Slaughter re Rule 26(f) certification.	2.60
05/30/2001	JES	Work on Rule 26(a)(1) disclosures; telephone conference with Corvette and Lischer re 26f conference and scheduling; work on 26f conference report.	7.10
05/31/2001	TEC	Review and respond to email from Slaughter re Rule 26(f) certification; office conference with Harlow re W.R. Grace developments and Polymer Group Inc.; research regarding PGI.	0.90

05/31/2001	DAH	Review Rule 26 (f) report. Telephone conference with Linsner; analysis re developments re PGI and W.R. Grace; office conference with Corvette; preliminary check for website.	1.50
05/31/2001	JES	Work on Rule 26 (a) (1) disclosures.	1.70
06/01/2001	DAH	File work. Review document	0.50
06/04/2001	ABC	Conference re Rule 26 initial disclosures	0.10
06/04/2001	DAH	Office conference with Corvette about Rule 26(f)/Scheduling conference	0.30
06/04/2001	TEC	Work on Pro Hac Vice motion; office conference with Harlow; office conference with Slaughter and Cohen re Rule 26(a) disclosures; office conference with Harlow re Rule 2b initial attorneys' conference	0.80
06/04/2001	JES	Work on Corvette's Motion Pro Hac Vice; work on Rule 26a1 disclosures; office conference w/ Corvette and Cohen re 26a1 disclosures	3.50
06/05/2001	TEC	Research and planning to attend Rule 26(f) conference on June 13, 2001; office conference w/ Slaughter re same; office conference w/Harlow	0.50
06/05/2001	DAH	Office conference w/Corvette; analysis; Memorandum to file.	0.80
06/06/2001	MTR	Research for Ted Corvette re Polymer Group, Inc.	1.20
06/06/2001	TEC	Office conference with Harlow re 26(f) conference; telephone call to Speer; research regarding PGI	1.50
06/06/2001	DAH	Work on pre-trial matters; consideration of witnesses and evidence; analysis and preparation for preliminary pretrial; office conference w/ Ted Corvette re all of the above; preliminary review of Materials on Polymer Group, Inc. Run conflict check on Polymer Group.	2.00
06/06/2001	JES	Office conference w/ Harlow and	

		16b conference, and legal strategy, ;	
		work on Rule 26a disclosures.	2.50
06/07/2001	JES	Final revisions to Rule 26a	
		disclosures; review notice changing 16b	
		conference date.	0.30
06/07/2001	DAH	Follow-up on scheduling conference	
		matters; further analysis of Polymer	
		Group materials.	0.80
06/07/2001	TEC	Review scheduling conference order	
		from Judge Gibbons; telephone	
		conference w/ Ms. Flagg, scheduling	
		case officer in Judge Gibbons district;	
		telephone call to Speer; email to Speer	
		re change in date for scheduling	
		conference	1.00
06/08/2001	JES	Deal w/ service of Rule 26a 1	
		disclosures: provide license agreement	
		Materials to Harlow; review	
		correspondence by Corvette re Rule	
		16(b) conference	0.20
06/08/2001	TEC		
		Review and respond to email from John	
		Speer re Rule 16 conference, scheduling	
		and order; cancel flight reservation to	
		Memphis on 6/12/01 due to Judge	
		Gibbons' rescheduling of conference.	0.40
06/08/2001	DAH	Scheduling matters; analysis;	
		memorandum to Linsner on numerous	
		issues related to Columbian Rope and	
		Polymer Group. Letter to Linsner.	
		Review patent licensee w/ W.R. Grace;	
		revise memorandum	2.00
06/10/2001	DAH	Review document	0.20
06/11/2001	DAH	Telephone conference w/ Linsner re WR	
		Grace and agreements, etc.; check	
		further on Polymer Group. Analysis re	
		simultaneous pursuit of other options	
		pending lapse of license and supply	
		agreements.	1.40
06/12/2001	JES	Review local counsel correspondence re	
		report of parties meeting and Rule 26a	
		disclosures; review opposing counsel	
		Motions Pro Hac Vice	0.40
06/13/2001	JES	Review Defendant's Rule 26a	
		disclosures.	0.20

06/18/2001	DAH	Review and analysis of Patent License Agreement; review and analysis of Supply Agreement; outline analysis.	1.20
06/20/2001	TEC	Review and sign Pro Hac Vice motion for Columbian Rope case in Tennessee; review invoices from Baker Donelson in Memphis; office conference re same.	0.30
06/28/2001	DAH	Additional check on Polymer Group. Further analysis on several issues including WR agreements; prepare and send memorandum to Linsner re same.	2.40
06/29/2001	TEC	Telephone call to Kamani re Rule 26(f) schedule changes.	0.20
06/29/2001	DAH	Exchange of email; office conference w/ Corvette; prepare draft notification letter to WR Grace; related further analysis of Patent license and of Supply agreement. Revise draft letter	1.50
07/02/2001	TEC	Office conference w/ Harlow re issues arising out of WR Grace patent license.	0.50
07/02/2001	DAH	Voicemail message to counsel for Columbian Rope re follow-up on settlement discussions; voice mail message from counsel for Columbian Rope. File work; further analysis re patent license; office conference w./ Corvette; memo to the file; forward same to Linsner.	1.60
07/03/2001	TEC	Review email from Harlow to Linsner re WR Grace patent license provisions.	0.20
07/06/2001	DAH	Telephone conference w/Linsner re patent license issues w/ WR Grace.	0.30
07/06/2001	TEC	Telephone conference w/Kamani, attorney for Columbian Rope re revisions to Rule 26 schedule; office conference w/Slaughter re same; second telephone conference w/Kamani re schedule change approval and email Slaughter re same.	0.80

		Review draft 16(b) scheduling Order, correspondence w/ Speer and Harbison re 16(b) scheduling order issues.	1.00
07/08/2001	DAH	File work. Review document	0.30
07/09/2001	JES	Office conference w/ Corvette re handling Markman hearings and Markman hearing research.	1.20
07/09/2001	TEC	Telephone conference with Speer re Rule 26(f) hearing with Judge Gibbons on 7/11/01; office conference w/ Harlow re settlement discussions, Markman hearing schedule and preparation for hearing.	1.80
07/09/2001	DAH	Analysis and outline of approach to counsel for Columbian Rope re any potential for settlement; lengthy telephone conference w/ counsel for Columbian Rope re same. Office conference w/ Corvette re timing of Markman hearing. Further analysis re Markman issues.	2.00
07/10/2001	DAH	Prepare memorandum on settlement discussions; preparation for preliminary pre-trial with the judge; office conference w/ Ted Corvette re settlement discussions; email memorandum to Linsner. File work.	2.40
07/10/2001	TEC	Prepare for Rule 26 hearing; office conference w/ Harlow re settlement possibilities; review proposed scheduling order.	2.60
07/11/2001	TEC	Office conference w/ Harlow; scheduling conference w/ Gibbons by Telephone w/ Harlow.	0.50
07/11/2001	DAH	Analysis re Markman hearing; preparation for conference call; conference call w/ Judge Gibbons re pre-trial and scheduling issues.	1.60
07/16/2001	TEC	Review and approve invoices from Baker, Donelson; work in file.	0.40
07/23/2001	JES	Review Scheduling Order and Status Conference Order	0.30
07/23/2001	TEC	Review scheduling orders from Judge Gibbons; work in file scheduling docket dates w/ secretary.	0.30

		Gibbons; review Notice of Setting; letter to Linsner re Scheduling Conference and status.	0.60
07/25/2001	TEC	Office conference w/ Harlow re potential settlement; review email from Harlow to Linsner	0.50
07/25/2001	DAH	Telephone conference w/ counsel for Columbian Rope re potential settlement of the matter: check on attorneys fees and costs expended so far; report to Linsner re settlement developments.	1.60
07/27/2001	DAH	Analysis re WR Grace license situation	0.30
07/30/2001	DAH	Email from Linsner	0.20
07/30/2001	TEC	Office conference w/ Harlow re WR Grace License provisions	0.20
08/02/2001	DAH	Follow-up on Polymer Group.	0.30
08/06/2001	DAH	Memorandum to Linsner.	0.40
08/07/2001	DAH	File work.	0.30
08/13/2001	MWI	Office conference w/ Harlow re: alternative product design around proposed by Columbian Rope.	0.30
08/13/2001	DAH	Telephone conference w/ attorney for Columbian Rope re settlement proposal. Analysis re settlement proposal; instruct associate re acrylic fiber issue; check w/ accounting.	1.10
08/14/2001	MWI	Review of file re: design around product proposed by Columbian Rope, as described by Harlow.	0.70
08/15/2001	MWI	Office conference w/ Harlow, Initial review of letter from opposing counsel w/ proposal for revisions to product.	0.40
08/15/2001	DAH	Telephone conference w/ Linsner re Columbian Rope proposal; letter to Linsner; preliminary review of materials forwarded by counsel for Columbian Rope.	0.80
08/16/2001	MWI	Review of references provided by Columbian Rope's attorney in proposal to design around the ADFIL patent.	1.40

		proposed fiber composition in view of claim language.	0.30
08/20/2001	MWI	Office conference w/ Harlow. Review of US Patent and Trademark office file history of ADFIL's patent w/ respect to materials claimed and cited art.	4.30
08/20/2001	DAH	First level review of patent in light of prior art and defendant's proposal on acrylic fiber; telephone conference w/ Linsner; office conference w/associate re patent file history re acrylic; office conference w/ Corvette re WR Grace. Analysis of prior art acrylic fiber U.S. Patent and EPO patent application; review of relevant organic chemistry materials and U.S. Patent file history materials. Analysis; preparation of memorandum re issues relating to acrylic fibers.	5.40
08/21/2001	MWI	Office conference w/ Harlow. Selection of relevant portions of US File History for his review.	1.50
08/21/2001	DAH	Further analysis; email to Linsner. Analysis re 30mm parameter; office conference w/associate re 30 mm parameter and re file history. Check on technical background of counsel for Columbian Rope; review ADFIL claims on 30 mm length parameter; exchange of email with Linsner.	2.20
08/22/2001	DAH	Exchange of email w/ Linsner on patent limitations issues. Read relevant documents from U.S. File history; analysis of mechanical specification issues on length and diameter. Office conference w/ Witsil re issues on length and diameter; email to Linsner; review relevant documents in EPO file history; analysis of same w/ particular reference to polyolefin issue on acrylic.	4.40
08/22/2001	MWI	Review of file history of US Patent and EPO opposition proceeding. Office	

		w/ Harlow. Preparation of memorandum re; design-arounds proposed by Columbian Rope.	7.40
08/23/2001	DAH	Review ADFIL U.S. Patent as issued with particular reference to the chemical character of the fibers claimed; office conference w/ associate re file history issues. Prepare for telephone conference; extensive telephone conference w/ counsel for Columbian Rope re acrylic proposal; further review of physical parameters of cited patent; office conference w/ associate re physical parameters.	3.40
08/23/2001	MWI	Research of US file history for surrender of length greater than 30 mm in prosecution (none found). Office conferences w/ Harlow. Preparation and completion of draft memorandum re: Columbian Rope's proposal to avoid infringement and settle suit.	9.40
08/24/2001	MWI	Office conference w/ Harlow and revisions finalizing memorandum re: Columbian Rope's settlement proposal.	1.20
08/24/2001	DAH	Review and analysis of memorandum on Columbian Rope proposal including analysis of "acrylic" patent. Office conference w/ associate re analysis memorandum.	1.40
08/27/2001	DAH	File work.	0.30
08/28/2001	DAH	Review revised memorandum on response to Columbian Rope proposal; office conference w/ associate re same and re preparation of draft response to Columbian Rope.	0.80
08/29/2001	DAH	Review memorandum in final form and send to Linsner; email to Linsner re status of response.	0.60
08/30/2001	DAH	Review basic cement/concrete technology.	1.50
08/31/2001	DAH	Voice mail message from Linsner; return call. Exchange of telephone	

09/04/2001	DAH	Check on draft response. Review and note revisions to draft letter responding to counsel for Columbian Rope.	1.00
09/04/2001	MWI	Preparation of draft response to counsel for Columbian Rope, rejecting proposed design arounds and suggesting alternative terms.	3.40
09/05/2001	DAH	Revisions to reply letter to counsel for Columbian Rope.	1.20
09/10/2001	MWI	Office conference w/ Harlow. Discussion and revision to text of draft letter to Columbian rope's counsel.	0.80
09/10/2001	DAH	Further revisions to draft letter to counsel for Columbian Rope; email same to Linsner for comment. Telephone conference w. Linsner re negotiations.	1.50
09/11/2001	DAH	Check chemical engineering handbook and other texts re "polyolefin" issue. Exchange of email w/ Linsner; telephone conference w/ counsel for Columbian Rope; office conference w/ Corvette; final review of letter and send same to counsel for Columbian Rope.	1.50
09/12/2001	DAH	Further investigation as to acrylic being a polyolefin derivative, e.g. being made from nitrogen reaction with propylene.	1.20
09/13/2001	MWI	Research for patents issued disclosing the manufacture of acrylonitrile from olefin, therefore showing that acrylonitrile comprises at least a derivative of olefin and would literally infringe the ADFIL patent. Preparation of transmittal to Harlow.	1.70
09/14/2001	DAH	Organize documents. Revise letter and send out draft for comment. Review US Patents No. 3,960,925, No. 5,235,088 and No. 4,333,741 all regarding deriving acrylonitrile from propylene et al; prepare letter to counsel for	

09/17/2001	TEC	Office conference w/ Harlow re settlement strategics w/ Columbian Rope.	1.00
09/17/2001	DAH	Telephone conference w/ counsel for Columbian Rope. Receipt of and review of counterproposal on settlement; extensive analysis of same including options to counter offer; voice mail message to counsel for Columbian Rope; file work; prepare and email memorandum to Linsner.	3.30
09/18/2001	TEC	Office conference w/ Harlow re settlement discussions.	0.30
09/18/2001	DAH	Analysis re structure of our counter offer; telephone message to Linsner; prepare and email memorandum to Linsner re settlement offer and potential responses.	1.60
09/20/2001	DAH	Voice mail message from Linsner; email to Linsner.	0.30
09/21/2001	DAH	File work; voicemail message from Carter; telephone conference with	
09/25/2001	DAH	Carter re settlement values; analysis.	0.80
09/25/2001	DAH	Analysis on response; prepare draft response letter to Columbian Rope on settlement proposal.	1.60
09/26/2001	DAH	Review comments.	0.40
09/26/2001	TEC	Review letter to Lischer and email to Harlow re same.	0.50
09/26/2001	MWI	Preparation of comments to Harlow on draft letter summarizing settlement position to Columbian Rope.	0.80
09/27/2001	DAH	Integrate revisions to response.	0.40
09/28/2001	TEC	Office conference w/ Harlow re settlement strategies.	0.30
09/28/2001	DAH	Office conference w/ Corvette re lawsuit; finalize letter to counsel for Columbian Rope.	0.80
10/01/2001	DAH	Voicemail message from counsel for Columbian Rope; telephone conference w/ office of our local counsel in Memphis; telephone conference w/ counsel for Columbian Rope re settlement proposal; report on same to Linsner.	0.80

		re settlement issues and re consideration of attorneys fees by Judge Gibbons.	
		Exchange of email w/ Linsner re settlement progress.	0.50
10/10/2001	DAH	Review counteroffer letter from counsel for Columbian Rope; Analysis of same; read reported case cited to me by counsel; memorandum to Linsner re counteroffer.	0.80
10/15/2001	DAH	Email to Linsner regarding latest settlement proposal.	0.20
10/16/2001	DAH	Attempts to reach Linsner; email to Carter. Exchange of email w/ Linsner re settlement issues.	0.60
10/17/2001	DAH	Draft response letter to counsel for Columbian Rope.0.40	
10/19/2001	DAH	Revise, finalize and send letter to counsel for Columbian Rope Co.0.50	
10/22/2001	DAH	Review additional instructions from Linsner.0.20	
10/24/2001	DAH	File work.0.30	
10/26/2001	TEC	Work in file.0.30	
10/29/2001	TEC		
		Office conference w/ Harlow re settlement agreement draft; review email from Harlow; begin work on draft settlement agreement.0.80	
10/29/2001	DAH	Review status; telephone conference w/ attorney for Columbian Rope re settlement; office conference w/ Corvette re preparation of documents; email memorandum to Linsner to report settlement; letter to counsel for Columbian Rope.	1.30
10/30/2001	TEC	Work on draft settlement agreement.	2.20
10/31/2001	DAH	Review email from Linsner; office Conference w/ Corvette re settlement documents.	0.40
10/31/2001	TEC	Work on ADFIL settlement agreement and final judgment; review letter from Harlow to Lischer.	4.50
11/05/2001	DAH	Draft settlement agreement; review revisions and make suggestions for revisions; office conference w/ Corvette re same.	0.50

11/06/2001	SDT	Office conference w/ IP partner re Settlement Agreement and need for Patent Transfer; conduct database search (USPTO. Delphion and Dialog) for status of ownership history; Revise Cemfiber ownership history; Revise Settlement Agreement for revisions marked by IP Partner; Prepare correspondence to IP Partner re changes made.	1.10
11/06/2001	TEC	Office correspondence w/ Harlow re draft settlement agreement; office conference w. Thomas re US Patent and Trademark Office search for assignment of '195 patent; review '195 patent ownership assignment from USPTO database.	1.30
11/08/2001	SDT	Conference with IP Partner re ordering US Patent Copy; review USPTO website for instructions on ordering copy of patent; telephone conference with USPTO re ordering patent copy.	0.50
11/08/2001	DAH	Office conference w/Corvette re form of consent judgment. Email from Linsner; check status on draft documents; reply to Linsner re status.	0.60
11/08/2001	TEC	Review and revise draft settlement agreement, Final Order and supporting documents to sent to Linsner and Speers.	1.70
11/09/2001	TEC	Review email form Speer re Settlement Agreement and Final Order; review email from Carter.	0.30
11/09/2001	DAH	Office conference w/ Corvette re hearing on attorneys fees. File work; review email on documents from local counsel; Analysis; exchange of email.	0.90
11/12/2001	SDT	Review original copy of US Patent ordered and received from USPTO and charge related fees to appropriate account for credit card charges.	0.20
11/12/2001	DAH	Note case on attorneys fees and advise Corvette of same; email to Linsner and Carter.	0.60
11/14/2001	TEC	Office conference w/ Harlow; review	

11/16/2001	DAH	Memorandum to Corvette.	0.20
11/19/2001	DAH	Office conference w/ Corvette re settlement documents.	0.20
11/19/2001	TEC	Review email from Speer re changes to Final Judgment and proposed settlement agreement; office conference w/ Harlow; telephone call to Speer's office; work in file.	1.30
11/20/2001	DAH	Analysis regarding choice of Magistrates for hearing on attorneys fees.	0.30
11/20/2001	TEC	Telephone conference w/ Speer re joint/separate agreed to order to refer attorneys fee issue to Magistrate; office conference w/ Harlow; email to Harlow re reference to Magistrate for attorneys fee determination.	1.00
11/23/2001	DAH	exchange of email with Linsner	0.20
11/27/2001	DAH	Office conference w/ Corvette re reference to US Magistrate.	0.20
11/27/2001	TEC	Review email from Harlow to Linsner and from Speer re motion for referral; office conference w/ Harlow.	0.50
11/28/2001	TEC	Review and revise proposed Settlement Agreement and Final Judgment in light of Speer's conversation with Judge Gibbon's case manager; draft joint motion; draft letter to Liseher.	1.80
11/29/2001	TEC	Work in file; email to Harlow.	0.30
12/04/2001	DAH	Memorandum to local counsel re settlement documents.	0.30
12/05/2001	TEC	Office conference w/ Harlow re ownership of '195 patent.	0.30
12/05/2001	DAH	Review drafts and make follow-up telephone call to counsel for Columbian Rope in an effort to move things to closure. Telephone conference w/counsel for Columbian Rope re documents; email to Linsner re counteroffer on the attorney fees.	1.00
12/07/2001	DAH	Exchange email w/ Linsner re counteroffer on attorney fees.	0.20
12/11/2001	DAH	Review comments from local counsel re form of the motion.	0.30

		Settlement Agreement; office conference w/ Harlow re same.	0.30
12/14/2001	DAH	Telephone conference w/ counsel for Columbian Rope.	0.20
12/18/2001	DAH	File work.	0.20
01/08/2002	DAH	Telephone conference w/ Linsner. Voice mail message to counsel for Columbian Rope.	0.40
01/11/2002	DAH	Receipt of and preliminary review of counter proposal on documents from counsel for Columbian Rope.	0.40
01/15/2002	DAH	Review and approve invoice from local counsel; review and annotate proposed changes to the Settlement Agreement and Consent Judgment; outline issues for resolution.	1.40
01/16/2002	DAH	Analysis and memorandum to the file re changes to settlement agreement/order proposed by counsel for Columbian Rope.	0.80
01/17/2002	TEC	Review and revise Settlement Agreement, Interlocutory Consent Judgment, Final Consent Judgment and review Harlow's analysis.	2.40
01/18/2002	DAH	Review additional analysis of proposed changes.	0.40
01/23/2002	DAH	File work.	0.20
01/25/2002	TEC	Office conference w/ Harlow re Columbian Rope's suggested revision to settlement documents.	0.60
01/25/2002	DAH	Further analysis of proposals from counsel for Columbian; memorandum to Linsner re same.	1.40
01/28/2002	DAH	Voice mail message from Linsner; telephone conference w/ Linsner re wording of agreements and related issues; memorandum to file re same; review suggested revisions form local counsel; review and approve invoice from local counsel.	0.80
02/06/2002	JES	Research and draft memo on patent infringement damages remedies, including damages theories and standards for increased damages and attorney's fees.	6.40

		and order.	0.30
02/14/2002	TEC	Review Lischer's proposed revisions to Settlement Agreement and Consent Order; telephone call to Lischer; left message.	0.40
02/14/2002	DAH	Telephone conference with Linsner re termination of WR Grace exclusivity, etc. Review WR Grace documents.	0.50
02/15/2002	DAH	File Work. Telephone conference w/ Linsner.	0.40
02/19/2002	DAH	exchange of emails w/ Local counsel.	0.30
02/19/2002	TEC	Review notes for telephone conference w/ Lischer.	0.30
02/20/2002	DAH	Office conference w/ Corvette re negotiations.	0.40
02/20/2002	TEC	Telephone conference w/ Lischer; office conference w/ Harlow re settlement agreement.	0.60
02/22/2002	DAH	Telephone conference w/ Linsner re sales of assets to PGI; review draft letter to Lischer; brief discussion w/ Corvette.	0.40
02/22/2002	TEC	Draft letter to Lischer; office conference w/ Harlow re same; review and finalize letter to Lischer.	1.80
02/26/2002	TEC	Telephone conference w. Lischer re remaining substantive issues in Settlement Agreement; email regarding same to Harlow.	0.50
02/28/2002	TEC	Review willfulness research re exceptional case standard for attorneys fees, etc.	0.40
12/07/2003	MWI	Drafting response letter to Columbian Rope and memorandum on analysis	4.00
11/27/2002	TEC	Assemble invoices and materials to prepare ADFIL's application for attorney's fees; office conference with Mr. Harlow regarding same	1.00
12/03/2002	DAH	Office conference with Ted Corvette/ analysis regarding preparation of petition and supporting documentation, affidavit, etc.	0.60
12/08/2002	MWI	Research for and preparation of declaration regarding chain of custody	

12/12/2002	TEC	Work on AFDIL's application for reasonable attorney fees; office conference with Mr. Slaughter regarding research on standard for attorney fees	6.30
12/12/2002	JES	Office conference with Mr. Corvette regarding attorney's fees submission; review Settlement Agreement, Interlocutory Consent Judgment, and Order of Reference; research and work on memo for attorney's fees submission	8.40
12/13/2002	TEC	Work on application for attorney fees; office conference with Ms. Childers regarding Schedule for 5 phases of case; draft motion and application for attorney fees; review Mr. Slaughter's memorandum and research regarding Lodestar standard for attorney fee determination; begin work on memorandum insupport of application	2.80
12/13/2002	JES	Research and work on memo for attorney's fees submission	5.00
12/15/2002	TEC	Work on Affidavit in Support of Application for Attorney Fees; work on Statement of Facts for memorandum in support of application for attorney fees	3.50
12/16/2002	DAH	Work on preparation of attorney fees submission	0.60
12/16/2002	TEC	Office conference with Mr. Slaughter regarding research on standards for attorney fees application; office conference with Mr. Witsil regarding Declaration and exhibits; draft memorandum in support of application for attorney fees	9.70
12/16/2002	MWI	Office conferences with Mr. Corvette. Revisions to affidavit as directed by Mr. Corvette to incorporate material to which he refers in his statement of facts.	3.10

		application for attorney fees; draft Declaration regarding MVA invoices paid by client and biographies and standard hourly rates for attorneys on case.	7.50
12/17/2002	MWI		
		Making revisions to my affidavit and reviewing new Appendices	0.30
12/18/2002	TEC		
		Telephone conference with Mr. Starnes regarding revisions to Memorandum in Support of Application for Reasonable Attorney Fees; email to Mr. Starnes regarding same.	0.30

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Dates of Service	Court's Reason for Adjustment	Reasonable Hours	Reasonable Rate	Adjusted Lodestar
06/15/2000	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
06/15/2000	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
06/30/2000	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
07/05/2000	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
07/24/2000	1) 2 of 5 entries conceded to be noncompensable; reduce by 40%; 2) 1 of 2 remaining entries vague; reduce by an additional 50%	0.24	\$ 275.00	\$ 66.00
07/25/2000	2 of 3 entries are vague; reduce by 66%	0.33	\$ 275.00	\$ 90.75
07/25/2000	1) 1 of 3 entries is vague; reduce by 33% and 2) reduce by additional .075 hours for overlap with DAH	1.97	\$ 160.00	\$ 315.36
07/28/2000	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
08/07/2000		0.40	\$ 160.00	\$ 64.00
08/17/2000				

		0.50	\$ 160.00	\$ 80.00
08/16/2000				
		2.80	\$ 160.00	\$ 448.00
08/16/2000				
	Reduce by 50% for padding	0.15	\$ 195.00	\$ 29.25
08/24/2000				
	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
08/25/2000				
	2 of 4 entries are vague; reduce by 50%	0.40	\$ 275.00	\$ 110.00
08/29/2000				
	3 of 4 entries are vague; reduce by 75%	0.25	\$ 275.00	\$ 68.75
09/18/2000				
	4 of 5 entries are vague; reduce by 80%	0.16	\$ 275.00	\$ 44.00
09/18/2000				
	1 of 2 entries is vague; reduce by 50%	0.50	\$ 160.00	\$ 80.00
09/19/2000				
	1 of 2 entries is vague; reduce by 50%	0.50	\$ 275.00	\$ 137.50
09/20/2000				
	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
09/20/2000				
		1.20	\$ 160.00	\$ 192.00
09/22/2000				
	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
09/25/2000				
	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
09/25/2000				
		0.80	\$ 160.00	\$ 128.00
09/28/2000				
	Noncompensable - Vague	0.00	\$ 160.00	\$ 0.00
09/28/2000				
	1 of 2 entries is vague; reduce by 50%	0.20	\$ 275.00	\$ 55.00
10/13/2000				
	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
10/16/2000				
	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
10/16/2000				
	1 of 2 entries is vague; reduce by 50%	0.25	\$ 160.00	\$ 40.00
10/18/2000				

10/19/2000				
	Reduce by 50% for padding	0.10	\$ 160.00	\$ 16.00
10/24/2000				
	3 of 4 entries are vague; reduce by 75%	0.20	\$ 275.00	\$ 55.00
10/24/2000				
		1.10	\$ 160.00	\$ 176.00
10/25/2000				
	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
10/25/2000				
	Reduce by 50% for padding	0.10	\$ 160.00	\$ 16.00
11/01/2000				
	Reduce by 50% for padding	0.10	\$ 275.00	\$ 27.50
11/01/2000				
	Noncompensable - Vague	0.00	\$ 160.00	\$ 0.00
11/06/2000				
		0.40	\$ 160.00	\$ 64.00
11/06/2000				
	1 of 5 entries is vague; reduce by 20%	2.24	\$ 275.00	\$ 616.00
11/09/2000				
	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
11/10/2000				
	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
11/17/2000				
	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
11/17/2000				
		0.50	\$ 160.00	\$ 80.00
11/20/2000				
	1 of 2 entries is vague; reduce by 50%	0.50	\$ 160.00	\$ 80.00
11/20/2000				
	1 of 5 entries is vague; reduce by 20%	1.76	\$ 275.00	\$ 484.00
11/21/2000				
		0.40	\$ 160.00	\$ 64.00
11/21/2000				
		0.50	\$ 195.00	\$ 97.50
11/21/2000				
		6.00	\$ 275.00	\$ 1,650.00
11/22/2000				
	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
11/22/2000				
	1 of 4 entries is vague; reduce by 25%	1.50	\$ 275.00	\$ 412.50

11/27/2000	2 of 6 entries are vague; reduce by 33%	1.98	\$ 275.00	\$ 544.50
				\$ 64.00
11/27/2000		0.40	\$ 160.00	
11/28/2000	1) Plaintiff concedes reduction of 2 hours for W.R. Grace issues; and 2) 4 of 7 remaining entries are vague; reduce remaining time by 57%	1.12	\$ 275.00	\$ 307.45
11/28/2000	Reduce by .15 hours for overlap with DAH	0.15	\$ 275.00	\$ 41.25
11/29/2000	1 of 6 entries is vague; reduce by 17%	2.66	\$ 275.00	\$ 730.40
11/29/2000	Reduce by 50% for padding	0.15	\$ 195.00	\$ 29.25
11/29/2000		0.80	\$ 275.00	\$ 220.00
11/29/2000	1) 1 of 4 entries is vague; reduce by 25% and 2) reduce by additional .40 hours for overlap with TEC	0.65	\$ 160.00	\$ 104.00
11/30/2000		3.20	\$ 275.00	\$ 880.00
11/30/2000	2 of 5 entries are vague; reduce by 40%	1.56	\$ 275.00	\$ 429.00
12/01/2000	1) 1 of 2 entries is vague; reduce by 50%; 2) additional reduction of .26 hours for overlap with DAH; and 3) reduce remainder by 50% for excessive hours	1.27	\$ 160.00	\$ 203.20
12/01/2000		0.40	\$ 275.00	\$ 110.00
12/01/2000	Reduce by 50% for excessive hours	0.80	\$ 160.00	\$ 128.00

12/01/2000		2.60	\$ 275.00	\$ 715.00
12/04/2000	1 of 3 entries is vague; reduce by 33%	0.53	\$ 275.00	\$ 145.20
12/04/2000	1) Reduce by .27 hours for overlap with DAH and 2) reduce remainder by 50% for excessive hours	1.67	\$ 160.00	\$ 266.40
12/04/2000	Reduce by .20 hours for overlap with TEC	6.30	\$ 80.00	\$ 504.00
12/05/2000		1.00	\$ 275.00	\$ 275.00
12/05/2000	1) Reduce by 50% for duplicate billing with DAH and 2) reduce remainder by 50% for excessive hours	0.73	\$ 160.00	\$ 116.00
12/06/2000	Reduce by .17 hours for overlap with DAH	0.23	\$ 160.00	\$ 36.80
12/06/2000	2 of 3 entries are vague; reduce by 66%	0.33	\$ 275.00	\$ 90.75
12/06/2000		1.50	\$ 80.00	\$ 120.00
12/08/2000	2 of 4 entries are vague; reduce by 50%	1.10	\$ 275.00	\$ 302.50
12/08/2000	1) 1 of 2 entries is vague; reduce by 50% and 2) reduce remainder by 50% for excessive hours	1.10	\$ 160.00	\$ 176.00
12/11/2000	1 of 2 entries is vague; reduce by 50%	0.25	\$ 160.00	\$ 40.00
12/11/2000	Noncompensable - duplicate of 12/13/2000	0.00	\$ 80.00	\$ 0.00
12/11/2000	1 of 4 entries is vague; reduce by 25%	1.95	\$ 275.00	\$ 536.25

	Reduce by .54 hours for overlap with DAH	1.56	\$ 80.00	\$ 124.80
12/13/2000				
	2 of 5 entries are vague; reduce by 40%	1.62	\$ 275.00	\$ 445.50
12/14/2000	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
12/15/2000	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
01/03/2001				
	Conference allowed because DAH conference hours Stricken for vagueness, but reduce by 50% for padding.	0.10	\$ 160.00	\$ 16.00
01/03/2001				
	Conference allowed because DAH conference hours stricken for vagueness	0.80	\$ 160.00	\$ 128.00
01/03/2001				
	4 of 5 entries are vague; reduce by 80%	0.52	\$ 275.00	\$ 143.00
01/04/2001				
	2 of 4 entries are vague; reduce by 50%	0.40	\$ 275.00	\$ 110.00
01/05/2001				
	2 of 4 entries are vague; reduce by 50%	0.80	\$ 275.00	\$ 220.00
01/05/2001				
	Reduce by .40 hours for overlap with DAH	4.80	\$ 160.00	\$ 768.00
01/05/2001				
	1 of 3 entries is vague; by 33%	4.82	\$ 160.00	\$ 770.88
01/08/2001				
	Reduce by .30 hours for overlap with JES	0.30	\$ 160.00	\$ 48.00
01/08/2001				
	3 of 6 entries are vague; reduce by 50%	0.70	\$ 275.00	\$ 192.50
01/08/2001		6.50	\$ 160.00	\$ 1,040.00
01/09/2001	Noncompensable - Vague	0.80	\$ 275.00	\$ 220.00
01/12/2001		0.40	\$ 275.00	\$ 110.00
01/12/2001				
	Plaintiff concedes reduction of .90 for W.R. Grace issues	0.90	\$ 160.00	\$ 144.00
01/15/2001				
	1 of 2 entries is vague; reduce			

01/16/2001				
	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
01/16/2001		0.50	\$ 160.00	\$ 80.00
01/19/2001	1) Plaintiff concedes reduction by 1.00 hours for W.R. Grace issues; 2) 4 of 6 remaining entries are vague; reduce by 66%	0.46	\$ 275.00	\$ 127.05
01/19/2001		3.50	\$ 160.00	\$ 560.00
01/22/2001	Plaintiff concedes reduction of .80 for W.R. Grace Issues	0.00	\$ 275.00	\$ 0.00
01/22/2001	Plaintiff concedes reduction of 1.50 for W.R. Grace Issues	0.00	\$ 160.00	\$ 0.00
01/24/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
01/25/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
01/29/2001	1) Reduce by .13 hours for overlap with DAH and 2) reduce by additional 50% for duplicate billing with DAH	0.54	\$ 160.00	\$ 85.60
01/29/2001	5 of 11 entries are vague; reduce by 45%	1.65	\$ 275.00	\$ 453.75
01/30/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
01/30/2001	Reduce by 50% for excessive hours	2.40	\$ 160.00	\$ 384.00
01/31/2001	Reduce by 50% for excessive hours	1.60	\$ 160.00	\$ 256.00
02/01/2001	Reduce by 50% for excessive hours	1.35	\$ 160.00	\$ 216.00
02/02/2001	Reduce by 50% for excessive hours	3.00	\$ 160.00	\$ 480.00
02/05/2001	Reduce by 50% for excessive hours	1.65	\$ 160.00	\$ 264.00
02/07/2001				

	reduce by 50%	0.50	\$ 275.00	\$ 137.50
02/14/2001	Plaintiff concedes noncompensable W.R. Grace	0.00	\$ 275.00	\$ 0.00
02/15/2001	Plaintiff concedes noncompensable W.R. Grace	0.00	\$ 160.00	\$ 0.00
02/15/2001		1.00	\$ 275.00	\$ 275.00
02/16/2001	Reduce by .25 hours for overlap with DAH	0.05	\$ 160.00	\$ 8.00
02/16/2001	1 of 2 entries is vague; reduce by 50%	0.25	\$ 275.00	\$ 68.75
02/19/2001	Plaintiff concedes reduction to .60 for noncompensable W.R. Grace issue. Remaining entry is vague - noncompensable.	0.00	\$ 160.00	\$ 0.00
02/19/2001	1) Plaintiff concedes reduction to 1.50 for noncompensable W.R. Grace issues, and 2) 1 of 7 remaining entries is vague; reduce by 14%	1.29	\$ 275.00	\$ 354.75
02/20/2001	1 of 2 entries is vague; reduce by 50%	0.20	\$ 275.00	\$ 55.00
02/20/2001	1 of 3 entries is vague; reduce by 33%	0.86	\$ 160.00	\$ 137.28
02/21/2001	Reduce by 50% for padding	0.10	\$ 160.00	\$ 16.00
02/21/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
02/22/2001	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
02/22/2001		2.90	\$ 160.00	\$ 464.00
02/23/2001	1 of 3 entries is vague; reduce by 33%	0.86	\$ 275.00	\$ 235.95
02/26/2001	1 of 4 entries is vague; reduce by 25%	0.98	\$ 275.00	\$ 268.13
02/28/2001	1 of 3 entries is vague; reduce by 33%	0.26	\$ 275.00	\$ 72.60

03/06/2001	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
03/06/2001	Reduce by .30 hours for DAH overlap	0.00	\$ 160.00	\$ 0.00
03/07/2001	3 of 5 entries are vague; reduce by 60%	0.96	\$ 275.00	\$ 264.00
03/08/2001	Noncompensable - Vague	2.60	\$ 160.00	\$ 416.00
03/08/2001		0.00	\$ 275.00	\$ 0.00
03/12/2001	Reduce by 50% for padding	0.15	\$ 160.00	\$ 24.00
03/12/2001		0.50	\$ 275.00	\$ 137.50
03/16/2001		3.20	\$ 160.00	\$ 512.00
03/26/2001	Reduce by 50% for padding	0.10	\$ 275.00	\$ 27.50
03/28/2001	1 of 3 entries is vague; reduce by 33%	0.53	\$ 275.00	\$ 145.20
03/29/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
03/29/2001	Reduce by 50% for duplicate billing with DAH	0.15	\$ 160.00	\$ 24.00
04/03/2001		0.60	\$ 275.00	\$ 165.00
04/05/2001	1 of 3 entries is vague; reduce by 33%	0.33	\$ 275.00	\$ 90.75
04/06/2001	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
04/15/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
04/16/2001	1 of 2 entries is vague; reduce by 50%	0.70	\$ 275.00	\$ 192.50
04/23/2001		0.40	\$ 275.00	\$ 110.00
04/24/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
04/24/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
04/25/2001	Reduce by 50% for duplicate billing with DAH	0.25	\$ 160.00	\$ 40.00
04/25/2001		2.40	\$ 160.00	\$ 384.00
05/04/2001	2 of 5 entries are vague; reduce by 40%	1.92	\$ 275.00	\$ 528.00
	Reduce by .30 hours for			

05/04/2001		1.20	\$ 275.00	\$ 330.00
05/07/2001		1.10	\$ 275.00	\$ 302.50
05/10/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
05/11/2001		1.00	\$ 160.00	\$ 160.00
05/14/2001	1 of 3 entries is vague; reduce by 33%	0.40	\$ 275.00	\$ 108.90
05/14/2001		0.60	\$ 160.00	\$ 96.00
05/14/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
05/18/2001	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
05/18/2001		0.40	\$ 160.00	\$ 64.00
05/21/2001	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
05/21/2001	Reduce by 50% for duplicate billing with DAH	0.20	\$ 160.00	\$ 32.00
05/22/2001	Reduce by .16 hours for overlap with DAH	0.34	\$ 160.00	\$ 54.40
05/29/2001		1.30	\$ 275.00	\$ 357.50
05/29/2001		2.00	\$ 275.00	\$ 550.00
05/29/2001	Reduce by .50 hours for overlap with TEC	5.40	\$ 160.00	\$ 864.00
05/30/2001		0.50	\$ 275.00	\$ 137.50
05/30/2001		2.60	\$ 275.00	\$ 715.00
05/30/2001	Reduce by .43 hours for overlap with TEC	6.67	\$ 160.00	\$ 1,067.20
05/31/2001	Conference time allowed because DAH time stricken as vague, but 1 of 3 issues Plaintiffs concedes is noncompensable W.R. Grace. Reduce by 33%.	0.30	\$ 275.00	\$ 81.68
05/31/2001	1) 3 of 5 entries are vague; reduce by 60%; 2) 1 of 2 remaining entries is noncompensable W.R. Grace; reduce remainder by 50%	0.30	\$ 275.00	\$ 82.50
05/31/2001		1.70	\$ 160.00	\$ 272.00
06/01/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00

		0.10	\$ 195.00	\$ 19.50
06/04/2001	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
06/04/2001				
	1 of 4 entries is vague; reduce by 25%	0.60	\$ 275.00	\$ 165.00
06/04/2001				
	Conference time allowed because TEC time stricken as vague	3.50	\$ 160.00	\$ 560.00
06/05/2001				
	1 of 3 entries is vague; reduce by 33%	0.33	\$ 275.00	\$ 90.75
06/05/2001				
	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
06/06/2001		1.20	\$ 160.00	\$ 192.00
06/06/2001				
	1) 1 of 3 entries is vague; reduce by 33% and 2) reduce by additional .15 hours for DAH overlap	0.84	\$ 275.00	\$ 231.00
06/06/2001		2.00	\$ 275.00	\$ 550.00
06/06/2001				
	Reduced by 1.25 hours for overlap with DAH and TEC	1.25	\$ 160.00	\$ 200.00
06/07/2001				
	Reduce by 100% for duplicate billing with DAH and TEC	0.00	\$ 160.00	\$ 0.00
06/07/2001				
	1 of 2 entries is vague; reduce by 50%	0.40	\$ 275.00	\$ 110.00
06/07/2001				
	1) 1 of 4 entries is vague; reduce by 25%; 2) Reduce by additional 25% for duplicate billing with DAH and JES	0.50	\$ 275.00	\$ 137.50
06/08/2001				
	1 of 3 entries is vague; reduce by 33%	0.13	\$ 160.00	\$ 21.12
06/08/2001		0.40	\$ 275.00	\$ 110.00
06/08/2001				
	1) Plaintiff concedes reduction to .60 for noncompensable W.R. Grace issues; 2) 3 of 4 remaining			

	75%	0.15	\$ 275.00	\$ 41.25
06/10/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
06/11/2001				
	Plaintiff concedes reduction to 0.00 for noncompensable			
	W.R. Grace	0.00	\$ 275.00	\$ 0.00
06/12/2001		0.40	\$ 160.00	\$ 64.00
06/13/2001				
	Reduce by 50% for padding	0.10	\$ 160.00	\$ 16.00
06/14/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
06/18/2001		1.20	\$ 275.00	\$ 330.00
06/20/2001	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
06/28/2001				
	1 of 3 entries is vague; reduce by 33%	1.58	\$ 275.00	\$ 435.00
06/29/2001	Reduce by 50% for padding	0.10	\$ 275.00	\$ 27.50
06/29/2001				
	Plaintiff concedes reduction to 0.00 for noncompensable			
	W.R. Grace	0.00	\$ 275.00	\$ 0.00
07/02/2001	Plaintiff concedes reduction to 0.00 for noncompensable			
	W.R. Grace	0.00	\$ 275.00	\$ 0.00
07/02/2001				
	3 of 7 entries are vague; reduce by 42%	0.93	\$ 275.00	\$ 255.20
07/03/2001				
	Plaintiff concedes reduction to 0.00 for noncompensable			
	W.R. Grace	0.00	\$ 275.00	\$ 0.00
07/06/2001				
	Plaintiff concedes reduction to 0.00 for noncompensable			
	W.R. Grace	0.00	\$ 275.00	\$ 0.00
07/06/2001		0.80	\$ 275.00	\$ 220.00
07/06/2001		1.00	\$ 160.00	\$ 160.00
07/08/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
07/09/2001		1.20	\$ 160.00	\$ 192.00
07/09/2001				
	Reduced by .125 horus for overlap with DAH	1.68	\$ 275.00	\$ 460.63
07/09/2001		2.00	\$ 275.00	\$ 550.00
07/10/2001				
	2 of 5 entries are vague; reduce by 40%	1.44	\$ 275.00	\$ 396.00

07/10/2001	Reduced by .24 hours for DAH overlap	2.36	\$ 275.00	\$ 649.00
07/11/2001	1 of 2 entries is vague; reduce by 50%	0.25	\$ 275.00	\$ 68.75
07/11/2001		1.60	\$ 275.00	\$ 440.00
07/16/2001		0.40	\$ 275.00	\$ 110.00
07/23/2001	Reduce by 50% for duplicate billing with DAH	0.15	\$ 160.00	\$ 24.00
07/23/2001	Reduce by 50% for duplicate billing with DAH	0.15	\$ 275.00	\$ 41.25
07/23/2001		0.60	\$ 275.00	\$ 165.00
07/25/2001		0.50	\$ 275.00	\$ 137.50
07/25/2001	1 of 3 entries is vague; reduce by 33%	1.06	\$ 275.00	\$ 290.40
07/27/2001	Plaintiff concedes reduction to 0.00 for noncompensable W.R. Grace	0.00	\$ 275.00	\$ 0.00
07/30/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
07/30/2001	Plaintiff concedes reduction to 0.00 for noncompensable W.R. Grace	0.00	\$ 275.00	\$ 0.00
08/02/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
08/06/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
08/07/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
08/13/2001	Reduce by .14 hours for DAH overlap	0.16	\$ 160.00	\$ 25.60
08/13/2001	1 of 4 entries is vague; reduce by 25%	0.83	\$ 275.00	\$ 226.88
08/14/2001		0.70	\$ 160.00	\$ 112.00
08/15/2001	Reduce by 50% for duplicate billing with DAH	0.20	\$ 160.00	\$ 32.00
08/15/2001	1 of 3 entries is vague; reduce by 33%	0.53	\$ 275.00	\$ 145.20
08/16/2001		1.40	\$ 160.00	\$ 224.00

08/20/2001	Reduced by .15 hours for overlap with DAH	0.15	\$ 195.00	\$ 29.25
08/20/2001	1 of 2 entries is vague; reduce by 50%	2.15	\$ 160.00	\$ 344.00
08/21/2001	1) 2 of 8 entries are vague; reduce by 25%; 2) one entry is non-compensable W.R. Grace; reduce by 12.5%	3.38	\$ 275.00	\$ 928.13
08/21/2001	1 of 2 entries is vague; reduce by 50%	0.75	\$ 160.00	\$ 120.00
08/22/2001	4 of 7 entries are vague; reduce by 57%	0.95	\$ 275.00	\$ 260.15
08/22/2001		4.40	\$ 275.00	\$ 1,210.00
08/23/2001	1) 1 of 3 entries is vague; reduce by 33%; 2) reduce by additional .50 hours for duplicate billing with DAH	4.38	\$ 160.00	\$ 701.44
08/23/2001		3.40	\$ 275.00	\$ 935.00
08/24/2001	1 of 3 entries is vague; reduce by 33%	6.20	\$ 160.00	\$ 992.64
08/24/2001	Reduce by .35 hours for overlap with DAH	0.85	\$ 160.00	\$ 136.00
08/27/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
08/28/2001		0.80	\$ 275.00	\$ 220.00
08/29/2001		0.60	\$ 275.00	\$ 165.00
08/30/2001		1.50	\$ 275.00	\$ 412.50
08/31/2001	1 of 3 entries is vague; reduce by 33%	0.33	\$ 275.00	\$ 90.75
09/04/2001	1 of 2 entries is vague; reduce by 50%	0.50	\$ 275.00	\$ 137.50
09/04/2001		3.40	\$ 160.00	\$ 544.00
09/05/2001		1.20	\$ 275.00	\$ 330.00
09/10/2001	Reduce by 50% for duplicate billing with DAH	0.40	\$ 160.00	\$ 64.00

09/11/2001	3 of 5 entries are vague; reduce by 60%	0.60	\$ 275.00	\$ 165.00
09/12/2001		1.20	\$ 275.00	\$ 330.00
09/13/2001		1.70	\$ 160.00	\$ 272.00
09/14/2001		3.80	\$ 275.00	\$ 1,045.00
09/17/2001		1.00	\$ 275.00	\$ 275.00
09/17/2001	4 of 6 entries are vague; reduce by 60%	1.32	\$ 275.00	\$ 363.00
09/18/2001	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
09/18/2001	1 of 3 entries is vague; reduce by 33%	1.06	\$ 275.00	\$ 290.40
09/20/2001	Noncompensable -- Vague	0.00	\$ 275.00	\$ 0.00
09/21/2001	2 of 4 entries are vague; reduce by 50%	0.40	\$ 275.00	\$ 110.00
09/25/2001		1.60	\$ 275.00	\$ 440.00
09/26/2001	Noncompensable -- Vague	0.00	\$ 275.00	\$ 0.00
09/26/2001		0.50	\$ 275.00	\$ 137.50
09/26/2001		0.80	\$ 160.00	\$ 128.00
09/27/2001		0.40	\$ 275.00	\$ 110.00
09/28/2001	Reduce by .20 hours for overlap with DAH	0.10	\$ 275.00	\$ 27.50
09/28/2001		0.80	\$ 275.00	\$ 220.00
10/01/2001	1 of 4 entries is vague; reduce by 25%	0.60	\$ 275.00	\$ 165.00
10/02/2001		0.50	\$ 275.00	\$ 137.50
10/10/2001		0.80	\$ 275.00	\$ 220.00
10/15/2001	Reduce by 50% for padding	0.10	\$ 275.00	\$ 27.50
10/16/2001	2 of 3 entries are vague; reduce by 66%	0.20	\$ 275.00	\$ 54.45
10/17/2001		0.40	\$ 275.00	\$ 110.00
10/19/2001		0.50	\$ 275.00	\$ 137.50
10/22/2001	Reduce by 50% for padding	0.10	\$ 275.00	\$ 27.50
10/24/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
10/26/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
10/29/2001	1) 1 of 3 entries is vague; reduce by 33% and 2) Reduce by additional .13 hours for			

10/29/2001	1 of 5 entries is vague; reduce by 20%	1.04	\$ 275.00	\$ 286.00
10/30/2001		2.20	\$ 275.00	\$ 605.00
10/31/2001	1 of 2 entries is vague; reduce by 50%	0.20	\$ 275.00	\$ 55.00
10/31/2001		4.50	\$ 275.00	\$ 1,237.50
11/05/2001	Reduce by 50% for duplicate billing with TEC	0.25	\$ 275.00	\$ 68.75
11/06/2001	Reduce by 50% for padding	0.10	\$ 275.00	\$ 27.50
11/06/2001	Reduce by .22 hours for TEC overlap	0.88	\$ 160.00	\$ 140.80
11/06/2001	Reduce by .16 hours for DAH overlap	1.14	\$ 275.00	\$ 313.50
11/08/2001		0.50	\$ 160.00	\$ 80.00
11/08/2001	2 of 4 entries is vague; reduce by 50%	0.30	\$ 275.00	\$ 82.50
11/08/2001		1.70	\$ 275.00	\$ 467.50
11/09/2001	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
11/09/2001	3 of 5 entries are vague; reduce by 60%	0.36	\$ 275.00	\$ 99.00
11/12/2001	Reduce by 50% for padding	0.10	\$ 160.00	\$ 16.00
11/12/2001	1 of 2 entries is vague; reduce by 50%	0.30	\$ 275.00	\$ 82.50
11/14/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
11/16/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
11/19/2001	Reduce by 50% for padding	0.10	\$ 275.00	\$ 27.50
11/19/2001	3 of 4 entries are vague; reduce by 75%	0.33	\$ 275.00	\$ 89.38
11/20/2001	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
11/20/2001	1 of 4 entries is vague; reduce by 25%	0.75	\$ 275.00	\$ 206.25
11/23/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
11/27/2001	Reduce by 50% for padding	0.10	\$ 275.00	\$ 27.50
11/27/2001				

	by 50%	0.25	\$ 275.00	\$ 68.75
11/28/2001		1.80	\$ 275.00	\$ 495.00
11/29/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
12/04/2001	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
12/05/2001	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
12/05/2001		1.00	\$ 275.00	\$ 275.00
12/07/2001	Reduce by 50% for padding	0.10	\$ 275.00	\$ 27.50
12/11/2001	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
12/11/2001	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
12/14/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
12/18/2001	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
01/08/2002	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
01/11/2002		0.40	\$ 275.00	\$ 110.00
01/15/2002		1.40	\$ 275.00	\$ 385.00
01/16/2002		0.80	\$ 275.00	\$ 220.00
01/17/2002		2.40	\$ 275.00	\$ 660.00
01/18/2002		0.40	\$ 275.00	\$ 110.00
01/23/2002	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
01/25/2002		0.60	\$ 275.00	\$ 165.00
01/25/2002		1.40	\$ 275.00	\$ 385.00
01/28/2002		0.80	\$ 275.00	\$ 220.00
02/06/2002		6.40	\$ 160.00	\$ 1,024.00
02/08/2002	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
02/14/2002		0.40	\$ 275.00	\$ 110.00
02/14/2002				
	Plaintiff concedes reduction to			
	0.00 for noncompensable			
	W.R. Grace	0.00	\$ 275.00	\$ 0.00
02/15/2002	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
02/19/2002	Noncompensable - Vague	0.00	\$ 275.00	\$ 0.00
02/19/2002	Reduce by 50% for padding	0.15	\$ 275.00	\$ 41.25
02/20/2002		0.40	\$ 275.00	\$ 110.00
02/20/2002				
	1) 1 of 2 entries is vague;			
	reduce by 50% and 2) reduce			
	by additional .20 hours for			
	overlap with DAH	0.10	\$ 275.00	\$ 27.50
02/22/2002				
	1 of 3 entries is vague; reduce			
	by 33%	0.26	\$ 275.00	\$ 72.60
02/22/2002		1.80	\$ 275.00	\$ 495.00
02/26/2002		0.50	\$ 275.00	\$ 137.50
02/28/2002				
	Plaintiff concedes			
	noncompensable	0.00	\$ 275.00	\$ 0.00

11/27/2002	Fee application time submitted in Pls.' Reply Memorandum	See Order	\$ 275.00	See Order
12/03/2002	Fee application time submitted in Pls.' Reply Memorandum	See Order	\$ 160.00	See Order
12/08/2002	Fee application time submitted in Pls.' Reply Memorandum	See Order	\$ 160.00	See Order
12/12/2002	Fee application time submitted in Pls.' Reply Memorandum	See Order	\$ 275.00	See Order
12/12/2002	Fee application time submitted in Pls.' Reply Memorandum	See Order	\$ 160.00	See Order
12/13/2002	Fee application time submitted in Pls.' Reply Memorandum	See Order	\$ 275.00	See Order
12/13/2002	Fee application time submitted in Pls.' Reply Memorandum	See Order	\$ 160.00	See Order
12/15/2002	Fee application time submitted in Pls.' Reply Memorandum	See Order	\$ 275.00	See Order
12/16/2002	Fee application time submitted in Pls.' Reply Memorandum	See Order	\$ 275.00	See Order
12/16/2002	Fee application time submitted in Pls.' Reply Memorandum	See Order	\$ 275.00	See Order
12/17/2002	Fee application time submitted in Pls.' Reply Memorandum	See Order	\$ 160.00	See Order

	submitted in Pls.' Reply Memorandum	See Order	\$ 275.00	See Order
12/17/2002				
	Fee application time submitted in Pls.' Reply Memorandum	See Order	\$ 160.00	See Order
12/18/2002				
	Fee application time submitted in Pls.' Reply Memorandum	See Order	\$ 275.00	See Order

[*35]

	Reasonable Hours	Reasonable
	(excluding fee	Fees for case
Original	474.60	287.74
Billed	(application)	in-chief \$ 62,840.02
Hours		
	Reasonable Fees for preparing fee Application (Capped at 3% of MVA's reasonable hours with 50% payable at \$ 160/hour and 50% payable at \$ 275/hour)	\$ 1,877.52
		Reasonable Fees \$ 64,717.54
		Subtotal
	Reduction for Disproportionate hours not Otherwise internized (5% of Reasonable Fees)	(\$ 3,235.88)
	Award for Baker, Donelson Attorney Fees Submitted as MVAExpenses *	\$ 5,226.00
		Reasonable Fees Total \$ 66,707.66

----- Footnotes -----

* According to Speer, the plaintiffs have incurred legal fees from Baker Donelson from April, 2001 through February, 2002 in the amount of \$ 5,226.00. (Pls.' Mem. in Supp. of Its App. for Payment Of Reas Att'y Fees, Ex. C, Speer Aff., at para. 3.) Because it appears that Baker, Donelson has not included fees attributable to work performed prior to April, 2001 or after February, 2002, this amount has not been reduced for Baker, Donelson's billing of paralegal time at \$ 100 and \$ 110 per hour rather than the \$ 80 per hour approved for MVA's reasonable paralegal time.

----- End Footnotes-----






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Exhibit 5

Service: Get by LEXSEE®
Citation: 2003 U.S. Dist. LEXIS 12852

2003 U.S. Dist. LEXIS 12852, *; 84 Empl. Prac. Dec. (CCH) P41,405

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, and ANTONIO ANGLIN, Intervenor, v. ENTERPRISE LEASING COMPANY, INC., Defendant.

Case No. 8:00-cv-2012-T-24EAJ

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, TAMPA
DIVISION

2003 U.S. Dist. LEXIS 12852; 84 Empl. Prac. Dec. (CCH) P41,405

May 13, 2003, Decided
May 13, 2003, Filed

DISPOSITION: [*1] Intervenor's Motion for Attorney's Fees GRANTED IN PART.

CASE SUMMARY

PROCEDURAL POSTURE: Following trial of an action brought by plaintiff Equal Employment Opportunity Commission (EEOC), intervenor's attorney applied for attorney's fees. In response, defendant argued that the fee request needed to be reduced, the hourly rate was too high, the fees did not bear a relationship to the intervenor's overall success, and the hours claimed were duplicative, unnecessary, and excessive.


OVERVIEW: In considering the motion, the court found that a more reasonable rate was \$ 200.00 not \$ 300.00 per hour, based on the prevailing market rate for an attorney of similar experience in that geographic area, the complexity of the case, and the applicant's customary billing rate. The applicant did not meet his burden of proving that he was entitled to any reimbursement for hours billed prior to the EEOC having filed the lawsuit except for hours spent preparing the motion for intervention. The court disallowed any hours billed for participating in discovery or other proceedings other than filing the motion before the date that intervention was granted. The court reduced the billing rate for hours that should have been performed by an associate or paralegal. There were tasks that were excessively billed for work that was not a distinct, unique, and substantial contribution to the work already being performed by the EEOC. The court also excluded time spent pursuing unsuccessful disputes. Although the court found that the hourly rate was too high and the hours spent were excessive, the court did not find that the lodestar should be further reduced.

OUTCOME: The court granted in part the intervenor's motion for attorney's fees by awarding an amount less than that requested.


CORE TERMS: billed, phase, spent, lodestar, motion to intervene, time spent, preparing, summary judgment, hourly rate, intervene, deposition, paralegal, sheets, hrs, pretrial conference, discovery, reply, block-billed, fee award, preparation, expended, drafting, revise, unsuccessful, pretrial statement, law clerk, intervenor, excessive, lawsuit, correspondence


LexisNexis (TM) HEADNOTES - Core Concepts - ♦ [Hide Concepts](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Attorney Fees](#) 

HN1  A court employs a three-step process to evaluate a motion for attorney's fees. First, the court must determine whether the movant is a "prevailing party." Second, the court must calculate the lodestar, which is the number of reasonable hours spent working on the case multiplied by a reasonable hourly rate. Third, the court must determine whether an adjustment to the lodestar is necessary. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 

HN2  The lodestar is the number of reasonable hours spent working on the case multiplied by a reasonable hourly rate. The fee applicant bears the burden of establishing entitlement and documenting the appropriate hours and hourly rates. [More Like This Headnote](#)

[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 


HN3  To calculate the lodestar, a court must determine the reasonable hourly rate to be charged by the attorney working on this case. A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation. The movant bears the burden of producing evidence of the prevailing market rate, and such evidence may consist of opinion evidence by other attorneys. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 

HN4  A fee applicant's customary billing rate for his hourly fee-paying clients ordinarily is the best evidence of his market rate. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 

HN5  A court may use its discretion and expertise to determine the appropriate hourly rate. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 


HN6  Fee applicants must exercise billing judgment, which means that they must exclude from their fee applications excessive, redundant, or otherwise unnecessary hours. Thus, fee applicants must exclude hours that would be unreasonable to bill to a client and therefore to one's adversary irrespective of the skill, reputation or experience of counsel. This means that the measure of reasonable hours is determined by the profession's judgment of the time that may be conscionably billed and not the least time in which it might theoretically be done. Exclusions for unnecessary or excessive time expended is left to the discretion of the court. A court should deduct unnecessary or redundant hours and time spent on discrete and unsuccessful claims. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 


HN7  Research of case law and rules for intervention is a task for an associate or paralegal and should be billed at an associate or paralegal rate, not at a partner rate. [More Like This Headnote](#)


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 


HN8  A fee applicant cannot demand a high hourly rate -- which is based on his or her experience, reputation, and a presumed familiarity with the applicable law -- and then run up an inordinate amount of time researching that same law. Routine tasks, if performed by senior partners in large firms, should not be billed at their usual rates. A Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn. [More Like This Headnote](#)

[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 


HN9  An attorney seeking fees should maintain records that clearly delineate the time spent on different claims, and the general subject matter of the time entries ought to be set forth with sufficient particularity so that the court can assess the time claimed for each activity. A district court should use a "task-by-task" examination of hours billed, and imprecise "block-billing" severely limits a court's review. [More Like This Headnote](#)

[Civil Procedure](#) > [Joinder of Claims & Parties](#) > [Intervention](#) 


[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 

HN10  A fee applicant, as the attorney for an intervenor, has the burden of proving not just that he was very active, but that his work constituted a distinct, unique, and substantial contribution to the strength of the plaintiff's position. [More Like This Headnote](#)

[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 

HN11  In determining the number of hours reasonably expended in a fee application, courts deduct time spent on discrete and unsuccessful claims. [More Like This Headnote](#)

[Civil Procedure](#) > [Costs & Attorney Fees](#) > [Reasonable Fee Amount](#) 

HN12  Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Furthermore, it is not necessarily significant that a prevailing plaintiff did not receive all the relief requested, if the relief obtained justified the expenditure of attorney time. However, a reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole. [More Like This Headnote](#)

COUNSEL: For Equal Employment Opportunity Commission, PLAINTIFF: C Gregory Stewart, Michael J Farrell, Delner Franklin-Thomas, M Teresa Rodriguez, Gwendolyn Y Reams, Equal Employment Opportunity Commission, Miami, FL USA.

For Equal Employment Opportunity Commission, PLAINTIFF: Pauline Terrelonge, Equal Employment Opportunity Commission, Tampa, FL USA.

For Enterprise Leasing Company of Florida DBA Enterprise Rent-A-Car, DEFENDANT: Peter W Zinober, Danielle R May, Luisette Gierbolini, Zinober & McCrea, PA, Tampa, FL USA.

For Antonio Anglin, Intervenor-PLAINTIFF: Mitchell Dean Franks, Neil A Roddenbery, Gray, Harris, Robinson, Lane, Trohn, Lakeland, FL USA.

JUDGES: SUSAN C. BUCKLEW, United States District Judge.

OPINIONBY: SUSAN C. BUCKLEW

OPINION: ORDER

This cause comes before the Court on Intervenor's Motion for Attorney's Fees (Doc. No. 179). Defendant filed a response in opposition to this motion (Doc. No. 188). Intervenor filed a reply to Defendant's response in opposition (Doc. No. 194) to which Defendant filed a surreply (Doc. No. 200). Plaintiff also filed a reply in opposition to Defendant's response [***2**] (Doc. No. 203).

I. Procedural Background

In the motion for attorney's fees, Intervenor Antonio Anglin's attorney, Mitchell Franks, asserts that he and his staff spent a total of 989.5 hours in the prosecution of Anglin's claims (Doc. No. 179, P 4). Of the 989.5 hours, 19.9 hours were expended by a law clerk and 56.0 hours were expended by a paralegal (Doc. No. 179, P 8). The rates charged for work performed by the law clerk and paralegal were \$ 65.00 per hour and \$ 55.00 per hour, respectively. Consequently, the total amount billed for the services of the law clerk and paralegal together was \$ 4,373.50. Defendant does not contest this amount.

The remainder of the hours billed to Anglin consist of 913.6 hours billed by Franks at a rate of \$ 300.00 per hour. In the motion, Franks explained that these hours reflected three phases of the litigation (Doc. No. 179, p.5-6). According to Franks, 23.2 hours were billed in Phase One, which spanned from the date that Franks was retained (August 10, 1999) until the date that the EEOC filed the lawsuit (September 28, 2000) (Doc. No. 179, p. 5). Franks states that he billed Anglin for 70 hours of work during Phase Two, which lasted [*3] from the date that the EEOC filed the lawsuit (September 28, 2000) until the date that Anglin moved to intervene in the lawsuit (May 2, 2001) n1 (Doc. No. 179, p. 5-6). Franks billed the remainder of his hours in Phase Three, which stretches from the date that Anglin moved to intervene in the lawsuit (May 2, 2001) until the filing of the instant motion (Doc. No. 179, p. 6).

- - - - - Footnotes - - - - -

n1 According to the Court record, Anglin actually filed his motion to intervene on May 4, 2001 (Doc. No. 20).

- - - - - End Footnotes- - - - -

In Defendant's response to the motion for attorney's fees, Defendant argues that Franks' fee request should be reduced. Defendant contends that Franks' hourly rate of \$ 300.00 is too high; that the amount of attorney's fees requested does not bear a relationship to Anglin's overall success; and that the actual hours expended were duplicative, unnecessary, and excessive.

II. Intervenor's Motion for Attorney's Fees

HN1⁷ The Court employs a three-step process to evaluate Plaintiff's motion for attorney's fees. See *Dillard v. City of Greensboro*, 213 F.3d 1347, 1353 (11th Cir. 2000). [*4] First, the Court must determine whether Plaintiff is a "prevailing party." See *id.* Second, the Court must calculate the lodestar, which is the number of reasonable hours spent working on the case multiplied by a reasonable hourly rate. See *id.* Third, the Court must determine whether an adjustment to the lodestar is necessary. See *id.* In the instant case, Defendant does not contest Anglin's status as a prevailing party. Rather, Defendant's opposition revolves around the calculation of the lodestar. Specifically, Defendant contends that the hourly rate Franks requests is too high and that the total hours expended are excessive.

A. Calculating the Lodestar

HN2⁷ The lodestar is the number of reasonable hours spent working on the case multiplied by a reasonable hourly rate. See *ACLU of Georgia v. Barnes*, 168 F.3d 423, 427 (11th Cir. 1999). "The fee applicant bears the burden of establishing entitlement and documenting the appropriate hours and hourly rates." *Norman v. Housing Authority of the City of Montgomery*, 836 F.2d 1292, 1303 (11th Cir. 1988)(citation omitted). Accordingly, the Court will address each element of the lodestar below. [*5]

1. Reasonable Hourly Rate

HN3 To calculate the lodestar, the Court must determine the reasonable hourly rate to be charged by the attorney working on this case. "A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *Id.* at 1299 (citation omitted). Franks bears the burden of producing evidence of the prevailing market rate, and such evidence may consist of opinion evidence by other attorneys. See *id.*

Franks is requesting a fee award for work performed during three phases of this case. For this work, Franks requests an hourly rate of \$ 300.00 per hour. In support of this rate, Franks has provided opinion evidence by two attorneys who state that this hourly rate is the reasonable market rate for attorneys with similar skill and experience in the Tampa Bay area (Doc. No. 182, Linesch Aff.; Doc. No. 183, Brush Aff.).

Defendant objects to these hourly rates as being too high. The principal basis for Defendant's objection is that this case was a simple, single plaintiff/single defendant employment discrimination case. The Court agrees with **[*6]** Defendant that the case was not particularly complex. The case did not go to trial and did not present complex legal issues. Further, Franks was not the lead counsel in this case. In fact, his client did not even file his motion to intervene in the case until over seven months after the EEOC filed its complaint against Defendant.

Moreover, the Court notes that the rate that Franks is seeking in his motion is \$ 50.00 higher than the highest rate that he seeks from his fee-paying clients. **HN4** A fee applicant's customary billing rate for his hourly fee-paying clients "ordinarily is the best evidence of his market rate." *Lambert v. Fulton Co.*, 151 F. Supp. 2d 1364, 1373 (N.D. Ga. 2000), *aff'd*, 253 F.3d 588 (11th Cir. 2001), *cert. denied*, 536 U.S. 906, 122 S. Ct. 2361, 153 L. Ed. 2d 182 (2002). In Franks' affidavit, he states that he charges his fee-paying clients between \$ 125.00 and \$ 250.00 per hour for labor and employment law matters (Doc. No. 179, Exh. A, Aff. of Mitchell Franks, p. 8).

HN5 The Court may use its discretion and expertise to determine the appropriate hourly rate. See *Scelta v. Delicatessen Support Services*, 203 F. Supp. 2d 1328, 1331 (M.D. Fla. 2002). **[*7]** Upon review of the case law and affidavits in support of and in opposition to the motion for attorney's fees, the Court finds that a more reasonable rate is \$ 200.00 per hour, based on the prevailing market rate for an attorney of similar experience in the greater Tampa Bay area, the complexity of the case, and Franks' customary billing rate.

2. Reasonable Hours Expended

Next, the Court must determine the number of reasonable hours expended by Franks while working on this case. **HN6** "Fee applicants must exercise . . . 'billing judgment,'" which means that "they must exclude from their fee applications 'excessive, redundant, or otherwise unnecessary [hours].'" *Barnes*, 168 F.3d at 428 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434, 76 L. Ed. 2d 40, 103 S. Ct. 1933 (1983)). Thus, fee applicants must exclude hours "that would be unreasonable to bill to a client and therefore to one's adversary *irrespective of the skill, reputation or experience of counsel.*" *Norman*, 836 F.2d at 1301 (emphasis in original). This means that "the measure of reasonable hours is determined by the profession's judgment of the time that may be conscionably **[*8]** billed and not the least time in which it might theoretically be done." *Id.* at 1306. Exclusions for unnecessary or excessive time expended is left to the discretion of the court. See *id.* at 1301. A court should deduct unnecessary or redundant hours and time spent on discrete and unsuccessful claims. See *Duckworth v. Whisenant*, 97 F.3d 1393, 1397 (11th Cir. 1996).

Franks claims that he should recover fees from Defendant for a total of 913.6 hours of work. Specifically, Franks states that he billed 23.2 hours during Phase One, 70 hours during Phase Two, and the remaining hours during Phase Three. The Court will separately address each phase of the case.

a. Phase One: August 10, 1999 -- September 28, 2000 n2

- - - - - Footnotes - - - - -

n2 Franks incorrectly states that the EEOC filed suit on September 27, 2000 (Doc. No. 179, p. 5). The EEOC filed its complaint in this Court against Defendant on September 28, 2000 (Doc. No. 1).

- - - - - End Footnotes- - - - -

Phase One spans from the date that Anglin retained Franks (August 10, 1999) **[*9]** until the date that the EEOC filed its complaint against Defendant (September 28, 2000). Franks claims he spent a total of 22.2 hours working on the case during this time period. n3 According to Franks' motion, this time encompassed the following: conciliation and settlement discussions with Anglin, the EEOC and Defendant; preparing discovery; review and assembly of documents produced during investigative phase; discussions with the EEOC attorneys; and drafting the EEOC complaint (Doc. No. 179, p. 5). Having reviewed Franks' motion and time entries for Phase One, the Court finds that Franks has not met his burden of proving that he should be entitled to any reimbursement by Defendant for hours billed prior to the EEOC filing the lawsuit. Accordingly, the Court finds that the lodestar amount for Phase One equals \$ 0.00.

- - - - - Footnotes - - - - -

n3 The Court notes that Franks claims a total of 23.2 hours spent during this time period. Upon review of Franks' time sheets, however, the Court finds that Franks spent a total of 22.2 hours.

- - - - - End Footnotes- - - - - **[*10]**

b. Phase Two: September 28, 2000 -- May 2, 2001

According to Franks, Phase Two stretches from the date that the EEOC filed its complaint against Defendant (September 28, 2000) until the date that Anglin moved this Court to allow him to intervene in the action (May 2, 2001). Upon review of the record, the Court notes that Franks actually filed Anglin's motion to intervene on May 4, 2001. Further, the Court notes that while Anglin may have moved to intervene on May 4, 2001, the Court did not permit Anglin to intervene until October 2, 2001. Consequently, more appropriate parameters for this phase are September 28, 2000 and October 2, 2001. Nevertheless, the Court will examine the hours billed by Franks in this phase within the confines of the dates he provided. For Phase Two of this case, Franks billed a total of 70.0 hours. In Franks motion for attorney's fees, Franks claims that he spent these hours, "representing Mr. Anglin at his two depositions, drafting and submitting discovery for use by the EEOC, participating in discovery directed toward the EEOC and Mr. Anglin, consulting with the EEOC on discovery matters, deposition and other issues, attendance at depositions and drafting **[*11]** Mr. Anglin's Motion to Intervene and Complaint." (Doc. No. 179, p. 6).

Regarding all time entries in Phase Two, the Court finds that Franks has not met his burden of proving that he is entitled to reimbursement from Defendant for hours spent during this time period on any tasks other than those spent preparing Anglin's motion for intervention. Reviewing Franks' time entries, the Court finds that Franks' first entry referencing a potential motion to intervene was documented on April 23, 2001. In this entry, Franks stated that he spent 0.5 hours "Reviewing file for Motion to Intervene" (Doc. No. 179, Exh. B, p. 5). Thus, Franks may recover any fees charged between April 23, 2001 and May 2, 2001 for time spent preparing the motion to intervene. However, Franks is not entitled to reimbursement for the following time entries during this time frame: 0.3 hours on 4.27/01; 0.8 hours on 4/30/01; and 2.8 hours and 2.3 hours on 5/1/01 (Doc. No. 179, Exh. B, p. 5-6). While these entries occurred during the time in which Franks was preparing Anglin's motion to intervene, they do not in any way relate to Anglin's motion to intervene.

Also, the Court notes that the entries for 4/24/01 and 4/25/01 are **[*12]** block-billed such that only part of the entry (and thus time) was spent on the motion to intervene. n4 The 4/24/01 entry states that Franks spent 2.5 hours reviewing correspondence, having a telephone conference with P. Zinober, and researching cases and rules regarding intervention (Doc. No. 179, Exh. B, p. 5). The Court will reduce these 2.5 hours by 50% such that Franks may be reimbursed for 1.25 hours for researching cases and rules regarding intervention. The Court notes, however, that while Franks may be reimbursed for this research, his rate is reduced to \$ 100 per hour for this research. ^{HN7} Research of case law and rules for intervention is a task for an associate or paralegal and should be billed at an associate or paralegal rate, not at a partner rate. See Ursic v. Bethlehem Mines, 719 F.2d 670, 677 (3d Cir. 1983) ("HN8" A fee applicant cannot demand a high hourly rate -- which is based on his or her experience, reputation, and a presumed familiarity with the applicable law -- and then run up an inordinate amount of time researching that same law . . . Routine tasks, if performed by senior partners in large firms, should not be billed at their usual rates. A Michelangelo **[*13]** should not charge Sistine Chapel rates for painting a farmer's barn.").

- - - - - Footnotes - - - - -

n4 ^{HN9} An attorney seeking fees in an action such as this one should maintain records that clearly delineate the time spent on different claims, and "the general subject matter of the time entries ought to be set forth with sufficient particularity so that the court can assess the time claimed for each activity." Barnes, 168 F.3d at 427. A district court should use a "task-by-task" examination of hours billed, and imprecise "block-billing" severely limits a court's review. See id. at 429. Franks "block-billed" many of his time entries. Block-billing makes it very difficult for a court to determine the specific amount of time spent by an attorney on each task. Thus, the Court has had to use its discretion throughout this Order to properly apportion the time spent on each task within a single time entry.

- - - - - End Footnotes - - - - -

Lastly, the 4/25/01 entry states that Franks spent 0.9 hours reviewing correspondence, revising the motion to **[*14]** intervene and complaint, and drafting correspondence. Of these three tasks, Franks may be reimbursed for his time spent revising the motion to intervene and complaint. Consequently, the Court will allow Franks to recover the \$ 200 per hour billable rate for 0.3 hours of the 0.9 hours documented in this time entry. Thus, the Court finds that the lodestar amount for Phase Two is \$ 805.00. n5

- - - - - Footnotes - - - - -

n5 The Court arrived at this amount from the sum of the following entries at the following rates: 0.5 hours at \$ 200/hour on 4/23/01; 1.25 hours at \$ 100/hour on 4/24/2001; 1.6 hours at \$ 200/hour on 4/24/01; 0.3 hours at \$ 200/hour on 4/25/01; 0.3 hours at \$ 200/hour on 4/26/01; and 0.4 hours at \$ 200/hour on 5/1/01; and 0.3 hours at \$ 200/hour on 5/2/02.

- - - - - End Footnotes- - - - -

c. Phase Three: May 2, 2001 -- November 21, 2002

Phase Three covers the time after Anglin moved to intervene through the filing of Franks' motion for attorney's fees. Again, the Court notes that although Anglin actually filed a motion to intervene on May 4, 2001, the Court **[*15]** did not permit Anglin to intervene until October 2, 2001. Consequently, Anglin was not a party to the case until October 2, 2001. Thus, Franks is not entitled to recover from Defendant for any hours billed prior to October 2, 2001 for such tasks as participating in discovery or any other proceeding of the litigation other than activity that related to the motion to intervene. n6 The Court will separately address the hours billed by Franks prior to and after October 2, 2001.

- - - - - Footnotes - - - - -

n6 This determination is consistent with the EEOC's understanding of Anglin and Franks' participation prior to intervention as expressed in a motion that the EEOC filed with this Court on August 16, 2001. In that motion, an emergency motion to extend the dates in the case management and scheduling order, the EEOC stated, "Mr. Anglin, by and through his attorney, Mitchell Franks, Esq., has moved for Intervenor status in this case, but his motion has not yet been granted and, as such, is not yet entitled to participate in the discovery and other litigation proceedings in this case." (Doc. No. 42, p. 3).

- - - - - End Footnotes- - - - - **[*16]**

1. Part One of Phase Three: May 2, 2001 -- October 1, 2001

During the five months while Anglin's motion to intervene was pending before the Court, Franks billed a total of 153.9 hours. For the reasons stated below Franks may recover fees from Defendant for 21.15 hours that he billed during these five months. As previously stated, prior to the October 2, 2001 Order, Anglin was not a party to this action. Consequently, Anglin as a non-party was not permitted to participate in discovery or other aspects of the litigation. Therefore, it naturally follows that this Court should not require Defendant to reimburse Franks for time that he spent on these matters in which he was not permitted to participate. Accordingly, Franks may only recover fees for hours spent in relation to Anglin's pending motion to intervene.

Reviewing Franks time entries during this time frame, the Court finds that Franks may recover attorney's fees for the following entries: n7 2.2 hours on 5/24/01; 0.5 hours on 5/29/01; 2.0 hours and 0.5 hours on 5/31/01; 2.0 hours on 6/4/01; 1.4 hours and 0.9 hours on 6/6/01; 0.6 hours and 0.70 hours on 6/7/01; 0.15 hours on 6/18/01; 0.3 hours on 6/25/01; 0.2 hours on 7/11/01; **[*17]** 0.8 hours on 9/13/01; 0.3 hours on 9/14/01; 0.1 hours on 9/18/01; 0.15 hours on 9/19/01; 0.5 hours and 0.6 hours on 9/24/01; 4.2 hours on 9/25/01; and 2.0 hours and 2.1 hours on 9/26/01. (Doc. No. 179, Exh. B, p. 7-11). Thus, Franks time entries reflect that he may recover attorney's fees for a total of 22.2 hours that he spent on this case during this first part of Phase Three (the period of time prior to this Court granting Anglin's motion to intervene).

However, Franks may not recover fees at the \$ 200 per hour billable rate for the entire 22.2 hours. Of these time entries for which Franks may recover attorney's fees from Defendant, some entries contain work which would have been more appropriate for an associate and thus should be billed at an associate rate of \$ 100 per hour. See Ursic, 719 F.2d at 677. Those entries that should be billed at a lower rate are the following: 1.5 hours on 5/24/01 for "research and review for Reply to Defendant's Response"; 2.0 hours on 5/31/01 for "read and review for reply to Defendant's response; draft Motion for Leave to File Reply; draft Reply"; 2.0 hours on 6/4/01 for "receive and review Barger deposition for use in Reply"; **[*18]** 1.4 hours on 6/6/01 for "Revise and edit Reply; read Barger deposition for page citations"; 0.6 hours on 6/6/01 for "draft Affidavit for FCHR"; 0.6 hours on 9/24/01 for "read cases for hearing on intervention"; 2.1 hours on 9/25/01 for "research and read cases, statutes, and rules." (Doc. No. 179, Exh. B, p. 7-11). Therefore, a total of 10.2 hours should be billed at a rate of \$ 100.00 per hour and a total of 12.0 hours should be billed at a rate of \$ 200.00 per hour. Accordingly, the lodestar amount for the first part of Phase Three is \$ 3,420.00.

- - - - - Footnotes - - - - -

n7 Since many of these entries are block-billed the Court has been forced to use its to adjust the time spent by Franks to reflect only the time spent in regards to the motion to intervene.

- - - - - End Footnotes- - - - -

2. Part Two of Phase Three: October 2, 2001 -- November 21, 2002

In an Order dated October 2, 2001, this Court granted Anglin's motion to intervene. At that late stage in the litigation, Anglin became a party to the suit. Franks claims that throughout the litigation, **[*19]** and during this final phase in particular, he was very active and worked very closely with the attorneys for the EEOC. According to Franks' time sheets, he billed a total of 667.5 hours during this final period. n8 ^{HN10}As the intervenor's attorney, Franks has the burden of proving not just that he was very active, but that his work constituted a distinct, unique, and substantial contribution to the strength of the EEOC's position. See Barnes, 168 F.3d at 432. After reviewing Franks' time sheets, the Court finds that the hours billed in part two of Phase Three should be reduced for the following reasons: tasks for which Franks excessively billed, pursuit of an unsuccessful discovery dispute, and tasks which should have been delegated to a paralegal or a less-experienced associate.

- - - - - Footnotes - - - - -

n8 The Court notes that during this period Becky Perkins, a paralegal, and Ashley Calhoun, a law clerk, billed 55.0 hours and 19.9 hours respectively. Since the Defendant does not contest these hours, the Court will not address these entries.

- - - - - End Footnotes- - - - - **[*20]**

Excessively Billed

In reviewing Franks' time sheets, there are tasks where the Court finds that Franks excessively billed for work that was not a distinct, unique, and substantial contribution to the work already being performed by the EEOC. The Court will separately address each of those

tasks.

The first task relates to preparation for a response to summary judgment. Approximately three months after Anglin became a party to the suit, Defendant filed its motion for summary judgment as to the claims originally asserted by the EEOC (Doc. No. 78, filed January 15, 2002). Reviewing this motion for summary judgment, it is clear to the Court that this motion was not directed at the claims recently asserted by Anglin. Indeed, the first paragraph of the motion states that Defendant "moves for summary judgment in it favor and against plaintiff the Equal Employment Opportunity Commission." (Doc. No. 78, p. 1). Nevertheless, Franks billed 81.6 hours preparing for a response to this motion which was not directed at his client and for which he never filed a response. n9 Moreover, the Court notes that, of these 81.6 hours, 31.5 hours were billed before Defendant even filed the January 15, 2002 motion [*21] for summary judgment. The Court finds that these 81.6 hours are not reasonable and should be deducted from Franks' fee award.

- - - - - Footnotes - - - - -

n9 The Court first notes that many of the entries in which Franks has included time spent preparing for the first summary judgment motion are block-billed. Thus, the Court in its discretion has determined that the time spent by Franks "preparing" for Defendant's first summary judgment motion is represented in the following entries: 0.4 hours on 12/13/01; 2.0 hours on 12/14/01; 2.0 hours on 12/17/01; 1.9 hours on 12/19/01; 1.5 hours on 12/24/01; 4.9 hours on 12/27/01; 4.2 hours on 12/28/01; 5.0 hours on 1/2/02; 3.8 hours on 1/4/02; 2.7 hours on 1/14/02; 3.1 hours on 1/15/02; 3.3 hours on 1/16/02; 3.6 hours on 1/17/02; 4.1 hours on 1/18/02; 3.1 hours on 1/21/02; 2.6 hours on 1/22/02; 3.3 hours on 1/23/02; 3.2 hours on 1/24/02; 2.9 hours and 0.2 hours on 1/25/02; 3.2 hours on 1/28/02; 0.6 hours and 2.4 hours on 1/29/02; 2.9 hours on 1/30/02; 0.3 hours and 2.5 hours on 2/1/02; 3.0 hours on 2/4/02; 2.7 hours on 2/5/02; 0.4 hours and 3.1 hours on 2/6/02; 2.5 hours on 2/7/02; and 0.2 hours on 2/11/02.

- - - - - End Footnotes- - - - - [*22]

On February 15, 2002, Franks again started billing his client again for time spent in preparation for response to a motion for summary judgment that had yet to be filed. By May 6, 2002, the date upon which Defendant filed a motion for summary judgment on Anglin's claims (Doc. No. 138), Franks had already billed 27.0 hours of time for preparation for a response to Defendant's motion for summary judgment on Anglin's claims. n10 The Court finds that this is not reasonable and that Franks should not be permitted to recover the attorney fees from Defendant for these 27.0 hours.

- - - - - Footnotes - - - - -

n10 These entries include: 1.3 hours on 2/15/02; 2.1 hours on 2/19/02; 2.1 hours on 2/28/02; 1.4 hours on 3/1/02; 1.0 hours and 1.2 hours on 3/11/02; 2.0 hours on 3/13/02; 2.2 hours on 3/20/02; 2.7 hours on 3/22/02; 2.8 hours on 4/15/02; 3.5 hours on 4/19/02; 1.7 hours on 5/1/02; and 3.0 hours on 5/6/02.

- - - - - End Footnotes- - - - -

Another task for which Franks excessively billed is the preparation of the pretrial statement and preparation for the pretrial conference. [*23] The pretrial conference was held on August 16, 2002. Two months prior to the hearing, Franks commenced preparing the pretrial

statement and preparing for the pretrial conference. In reviewing Franks' time sheets, the Court finds that Franks spent 114.5 hours preparing the pretrial statement and preparing for the pretrial conference. n11 Because Franks' entries are vague, it is not clear to the Court what Franks spent 114.5 hours reading and reviewing. The Court finds that 114.5 hours is an unreasonable amount of hours to spend on drafting a pretrial statement and preparing for the pretrial conference for a single plaintiff/single defendant case in which the EEOC was lead counsel. Rather, the Court finds 15 hours to be a reasonable amount of time for an attorney to spend on preparing a pretrial statement and preparing for a pretrial conference for a case of this level of complexity. Therefore, the Court finds that Franks may recover attorney's fees for 15 hours of the 114.5 hours he billed for these pretrial tasks.

----- Footnotes -----

n11 Again, because Franks block-billed in many of his time entries, the Court had to use its discretion in determining how many hours within each entry could actually be attributed to Franks' pretrial stipulation and pretrial conference preparation. The Court found that the following entries represented the time spent by Franks performing these pretrial tasks: 2.2 hours on 6/19/02; 3.0 hours on 6/24/02; 3.0 hours on 6/25/02; 3.1 hours on 6/26/02; 3.0 hours on 6/27/02; 6.3 hours on 7/1/02; 5.6 hours on 7/2/02; 2.1 hours on 7/3/02; 5.8 hours on 7/5/02; 4.7 hours on 7/8/02; 4.0 hours on 7/9/02; 5.4 hours on 7/10/02; 1.6 hours on 7/11/02; 3.5 hours on 7/16/02; 1.8 hours on 7/18/02; 3.0 hours on 7/19/02; 5.3 hours on 7/23/02; 2.4 hours on 7/29/02; 2.9 hours on 7/30/02; 1.25 hours on 7/31/02; 3.0 hours on 8/6/02; 5.3 hours on 8/7/02; 4.6 hours on 8/8/02; 6.9 hours on 8/9/02; 3.6 hours on 8/10/02; 2.0 hours on 8/11/02; 5.0 hours on 8/12/02; 1.8 hours and 3.0 hours on 8/13/02; 3.0 hours on 8/14/02; and 6.0 hours on 8/15/02.

----- End Footnotes----- **[*24]**

Lastly, the Court finds that Franks excessively billed for a conference on November 14, 2002 with D. Linesch regarding attorney's fees. Franks traveled from Lakeland to Palm Harbor for this conference and billed for this travel time. An attorney fee affidavit could have been secured by telephone. Accordingly, Franks may not recover for 3.0 hours of the 6.6 hours billed in Franks' time entry on 11/14/02.

Unsuccessful Disputes

The Court may also exclude from a fee award any time spent pursuing unsuccessful disputes. ^{HN11} In determining the number of hours reasonably expended, courts deduct time spent on discrete and unsuccessful claims. See *Texas State Teachers Ass'n v. Garland Ind. Sch. Dist.*, 489 U.S. 782, 103 L. Ed. 2d 866, 109 S. Ct. 1486 (1989); *Hensley*, 461 U.S. at 434. In Defendant's response to Franks' motion for attorney's fees, Defendant asserts that Franks' fee award should be reduced so that it does not reflect any time he spent on the unsuccessful attempt to avoid Rule 26 disclosures. The Court agrees. Upon reviewing Franks' time sheets, the Court finds that Franks billed 48.05 hours on the Rule 26 disclosures issue. n12 Defendant should **[*25]** not be made to compensate Franks for this time.

----- Footnotes -----

n12 Again, the Court notes that Franks block-billed many of these entries. The Court, in its discretion, has determined that the following entries reflect the time spent by Franks on the unsuccessful Rule 26 disclosures issue: 0.3 hours on 1/14/02; 2.4 hours on 2/12/02; 0.5 hours and 0.3 hours on 2/14/02; 1.2 hours on 2/25/02; 0.2 hours on 2/26/02; 0.4 hours and 0.2 hours on 2/27/02; 1.4 hours on 3/25/02; 0.7 hours on 4/1/02; 3.8 hours on 4/2/02; 1.3

hours on 4/9/02; 0.4 hours on 4/15/02; 0.3 hours on 4/16/02; 2.4 hours on 4/17/02; 1.0 hours on 4/18/02; 0.6 hours and 2.8 hours on 4/22/02; 0.1 hours on 4/23/02; 0.2 hours on 4/24/02; 0.7 hours on 5/28/02; 1.6 hours on 6/6/02; 0.8 hours on 6/10/02; 0.7 hours on 6/12/02; 2.3 hours on 7/22/02; 0.3 hours on 7/23/02; 0.5 hours on 7/24/02; 3.2 hours on 7/25/02; 6.8 hours and 3.0 hours on 7/26/02; 3.2 hours on 7/29/02; 1.25 hours on 7/31/02; 1.0 hours on 8/2/02; 2.0 hours on 8/5/02; and 0.2 hours on 8/6/02.

- - - - - End Footnotes - - - - -

*Associate or [*26] Paralegal Work*

Lastly, 87.3 hours of the remaining time in part two of Phase Three must be discounted to reflect that these hours were spent performing tasks that should have been delegated to an associate or paralegal. These entries consist of such tasks as reviewing documents, drafting documents, and researching case law. n13 Thus, the fee award shall reflect that these 87.3 hours should be billed at \$ 100.00 per hour for a lodestar amount of \$ 8,730.00

- - - - - Footnotes - - - - -

n13 These tasks are reflected in the following entries: 0.2 hours on 10/29/01 for "Execute Subpoenas (2) for serving"; 1.0 hours on 12/11/01 for "Read recent cases re: discrimination, damages and punitive damages; draft correspondence to T. Rodriguez re: same"; 1.0 hours on 12/13/01 "Receive and review Order dated December 10, 2001 (26 pages)"; 2.1 hours on 2/19/02 for "Research and read recent cases re: pretext and race discrimination"; 6.3 hours on 3/19/02 for "Review pleading file for response to Defendant's motion for a New Case Management Order; draft and revise Plaintiff's opposition to Defendant's Motion"; 3.3 hours on 3/26/02 for "Research cases, read and review or response to motion re: Defendant's motion"; 3.3 hours on 3/27/02 for "Read and review Federal Rules of Evidence and cases re: summaries and exhibits"; 3.3 hours on 4/29/02 for "Review cases re: Title VII and FCRA interface and damages"; 3.7 hours on 4/30/02 for "Research and read cases re: damages; read and review for motions"; 1.7 hours on 5/1/02 for "Read deposition of Drew Akers"; 0.3 hours and 3.5 hours on 5/15/02 for "Receive and review recent case settled by Enterprise on race/promotions" and "Read documents and depositions for response to Defendant's Motion for Summary Judgment"; 3.4 hours on 5/16/02 for "Read documents, depositions and cases for response to Defendant's Motion for Summary Judgment"; 2.2 hours on 5/17/02 for "read documents, cases for response to Defendant's Motion for Summary Judgment"; 6.7 hours on 5/20/02 for "Read and review documents, depositions and exhibits for response to Defendant's Motion for Summary Judgment"; 6.0 hours on 5/22/02 for "Draft response to Motion for Summary Judgment; draft Statement of Facts; research and read cases re: response to MSJ"; 3.5 hours 5/23/02 for "Research and read re: cases for response; revise and edit motions"; 4.0 hours on 5/24/02 for "Research, read, review and revise Response to Motion"; 4.1 hours on 8/19/02 for "Draft Proposed Jury Instructions, Verdict Form and Voir Dire; continue draft Mediation Statement"; 1.3 hours on 8/20/02 for "Continue draft of Mediation Statement"; 1.0 hours on 8/27/02 for "read cases re: attorneys' fees"; 1.6 hours on 8/28/02 for "Research and read cases re: attorneys' fees"; 1.8 hours on 8/30/02 for "read cases re: attorneys' fees"; 4.3 hours on 9/20/02 for "Review and edit time sheets re: attorneys' fees; read cases re: attorneys' fees"; 3.0 hours on 9/23/02 for "read cases re: attorneys' fees"; 1.8 hours on 9/24/02 for "Revise and edit time sheets"; 2.7 hours on 10/1/02 for "Assemble and review materials in support of attorneys' fees requested by P. Zinober"; 2.3 hours on 11/11/02 for "Read and review for motion for fees; telephone conference with Attorney General's Office re: rate in Tampa"; 1.9 hours on 11/18/02 for "Read cases re: attorneys' fees"; 2.0 hours on 11/19/02 for "Research and read re: attorneys' fees"; 2.0 hours and 2.0 hours on 11/20/02 for "Research affidavit testimony of P. Zinober; review Zinober affidavit filed in Middle District case" and "Continue research and

reading attorneys' fees cases for Motion for fees" (Doc. No. 179, Exh. B, p. 12-29).

----- End Footnotes----- [*27]

In sum, the final lodestar for part two of Phase Three of the litigation is \$ 72,940.00. n14

----- Footnotes -----

n14 667.5 hrs -- (81.6 hrs + 27.0 hrs + 99.5 hrs + 3.0 hrs + 48.05 hrs + 87.3 hrs) =
 321.05 hrs (321.05 hours x \$ 200.00/hour) + (87.3 hours x \$ 100.00/hour) = \$ 72,940.00

----- End Footnotes-----

d. Total Resulting Lodestar Amount

Based on the above, the Court finds that the resulting lodestar amount is \$ 77,165.00 as summarized in the following table:

Phase of Litigation	Actual Hours	Less Unreasonable Hours	Remaining Hours	Billing Rate	Reasonable Fees
Phase One	22.2	22.2	0	n/a	n/a
Phase Two	70.0	65.35	3.4	\$ 200.00	\$ 680.00
			1.25	\$ 100.00	\$ 125.00
Phase Three, Part One	153.9	131.7	12.0	\$ 200.00	\$ 2,400.00
			10.2	\$ 100.00	\$ 1,020.00
Phase Three, Part Two	667.5	259.15	321.05	\$ 200.00	\$ 64,210.00
			87.3	\$ 100.00	\$ 8,730.00
Lodestar Amount					\$ 77,165.00

2. Adjustment to the Lodestar

After the Court calculates the lodestar, [*28] the Court must determine whether an adjustment to the lodestar is necessary. ^{HN12} "Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee." *Hensley*, 461 U.S. at 435. Furthermore, it is not "necessarily significant that a prevailing plaintiff did not receive all the relief requested[,] . . . if the relief obtained justified the expenditure of attorney time. *Id.* at 435 n.11. However, "[a] reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole." *Id.* at 440.

Although the Court finds that Franks' hourly rate was too high and his hours spent were excessive, the Court does not find that the lodestar should be further reduced. Therefore, Franks is awarded attorney's fees in the amount of \$ 77,165.00, as outlined above.

IV. Conclusion

Accordingly, it is ORDERED AND ADJUDGED that Intervenor's Motion for Attorney's Fees (Doc. No. 179) is **GRANTED IN PART**. Intervenor is hereby awarded \$ 81,538.50. This total award is the sum of \$ 77,165.00 for work performed by Mitchell Franks, Esq. and \$ 4,373.50 **[*29]** for the services of a paralegal and a law clerk.

DONE AND ORDERED in Tampa, Florida this 13th day of May, 2003.

SUSAN C. BUCKLEW

United States District Judge

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Exhibit 6

DEFENDANT'S OBJECTIONS TO PLAINTIFF COUNSELS' TIME ENTRIES

DATE	ATTY/PARA	TIME	DESCRIPTION	OBJECTION
02/08/01	Theresa L. Groh	1.0	Phone conference with M. Wolf; review fax; research ERISA	Vague – no topic of conference and insufficient explanation of “research”; block billing without itemization of tasks
02/09/01	Theresa L. Groh	3.0	Phone conference with M. Wolf; review file materials; research ERISA	Vague – no topic of conference and insufficient explanation of research; block billing
02/16/01	Theresa L. Groh	12.0	Prep for, travel and meet with M. Wolf and potential clients re: case; conference with J. Murdock and J. Goldenberg; research ERISA; fact investigation	Vague – no topic of conference and insufficient explanation of research and “fact investigation”; block billing
02/16/01	John C. Murdock	9.25	Conference with T. Groh and J. Goldenberg; research ERISA	Vague – no topic of conference and insufficient explanation of research; duplicative of Groh and Goldenberg time on same date
02/16/01	Jeffrey S. Goldenberg	5.0	Research and conference with J. Murdock and T. Groh	Vague, duplicative, and block billing; billing for three partners in conferences and three partners conducting overlapping/duplicative research
02/17/01	John C. Murdock	11.0	Research ERISA case law; review of fact investigation for due diligence before filing; conferences with T. Groh, B. McGrath and J. Goldenberg	Vague – no topic of conferences and insufficient explanation of research; excessive billing for conference with four attorneys; block billing
02/17/01	Theresa L. Groh	12.0	Research and fact investigation; conferences with J. Murdock, B. McGrath and J. Goldenberg	Vague – no topic of research or conferences or explanation of fact investigation; duplicative of above entry; excessive billing for conference with four attorneys; block billing
02/17/01	Jeffrey S. Goldenberg	6.0	Conferences with T. Groh, J. Murdock and B. McGrath; research	Vague – no topic of conferences or research; block billing; excessive billing for attorneys in conference;

				duplication/redundancy of above entries on same date.
02/17/01	V. Brandon McGrath	4.0	Research ERISA; conferences with T. Groh, J. Murdock and J. Goldenberg	Vague – no topic of conferences and insufficient explanation of research; block billing; excessive billing for attorneys in conference; duplication/redundancy of above entries on same date.
02/18/01	John C. Murdock	12.75	Research and fact investigation; conferences with T. Groh and B. McGrath	Vague – no topic of research or conferences and insufficient explanation of fact investigation; excessive billing attorneys in conferences/duplication; block billing
02/18/01	Theresa L. Groh	14.0	Research and fact investigation; conferences with J. Murdock and B. McGrath	Vague – no topic of research or conferences or explanation of fact investigation; excessive billing attorneys/duplication; block billing.
02/18/01	V. Brandon McGrath	6.0	Research ERISA; conferences with J. Murdock and T. Groh	Vague – no topic of conferences, insufficient explanation of research; excessive billing attorneys/duplication; block billing.
02/19/01	John C. Murdock	10.5	Research and draft complaint; conferences with T. Groh, B. McGrath and J. Goldenberg	Vague – no topic of research or conferences; excessive billing attorneys; block billing.
02/19/01	Theresa L. Groh	12.0	Research and draft complaint; conferences with J. Murdock, B. McGrath and J. Goldenberg	Vague – no topic of research or conferences; excessive billing attorneys in conferences; block billing; duplication of work.
02/19/01	Jeffrey S. Goldenberg	3.0	Conferences with J. Murdock, T. Groh and B. McGrath	Vague – no topic of conferences; excessive billing for conferences attended by four attorneys.
02/19/01	V. Brandon McGrath	8.0	Research ERISA; conferences with J. Murdock, T. Groh and J. Goldenberg	Vague – insufficient explanation of research, no topic of conferences; excessive billing for conferences attended by four attorneys; block billing.

02/20/01	John C. Murdock	10.75	Research and draft complaint; conferences with T. Groh and B. McGrath	Vague – no topic of research of conferences; excessive billing for conferences attended by three attorneys; block billing
02/20/01	Theresa L. Groh	12.0	Research and draft complaint; conferences with J. Murdock and B. McGrath	Vague – no topic of research or conferences; excessive billing attorneys; duplication/redundancy in tasks performed; block billing
02/20/01	V. Brandon McGrath	8.0	Research ERISA; conferences with J. Murdock and T. Groh	Vague – insufficient explanation of research; no topic of conferences; excessive billing attorneys in conferences; block billing
02/21/01	John C. Murdock	12.25	Review/revise Complaint; draft Class Representatives Rights and Responsibilities; draft Plaintiffs' First Set of Document Requests; draft memo to B. McGrath re: discovery; conferences with T. Groh	Duplication/redundancy in work performed by other attorneys; no topic of conferences; block billing
02/21/01	Theresa L. Groh	14.0	Draft complaint; review J. Murdock memo to B. McGrath re: discovery; conferences with J. Murdock; prepare for and meet with clients	Duplication/redundancy in work performed by other attorneys; vague - no topic of conferences; block billing
02/21/01	V. Brandon McGrath	4.0	Research and draft discovery	Vague – no topic of research; duplication of tasks/redundancy
02/22/01	John C. Murdock	6.5	Prepare Civil Cover Sheet and attachment to same; edit/revise Complaint; conferences with T. Groh	Vague – no topic of conferences; duplication of tasks/redundancy; excessive billing attorneys
02/22/01	Theresa L. Groh	10.0	Draft, revise and finalize Complaint; conference with J. Murdock; phone conference with clients	Vague – no topic of conferences; duplication of tasks/redundancy; excessive billing attorneys
02/22/01	V. Brandon McGrath	2.5	Research ERISA	Vague – insufficient explanation of research
02/23/01	John C. Murdock	.25	Draft letter to Wolf	Vague – no subject of letter
02/23/01	Theresa L. Groh	5.5	Phone conferences and letters to clients re: Complaint and strategy; organize files; outlined discovery; phone conference with M. Wolf	Vague – no topic of conference with M. Wolf; duplication/redundancy in discovery billing; partner billing time for “organizing files”; block billing
02/26/01	Theresa L. Groh	2.5	Phone conference with clients; outline issues and	Vague – no topic of conference;

			organize research files	partner billing time for organizing files; block billing
02/28/01	Theresa L. Groh	.25	Phone conference with clients	Vague – no topic of conference
03/01/01	Theresa L. Groh	.25	Draft Noonan and Dalesandro letter	Vague – no subject of letter
03/01/01	John C. Murdock	.25	Review and edit T. Groh Noonan and Dalesandro letter	Vague – no subject of letter
03/12/01	Theresa L. Groh	.25	Phone conference with clients	Vague – no topic of conference
03/15/01	Theresa L. Groh	.5	Phone conference with clients	Vague – no topic of conference
03/20/01	John C. Murdock	6.25	Review Defendant's motion to stay; review Defendant's Answer; phone conference with client; draft and edit Dalesandro affidavit re: stay motion; conference with T. Groh	Vague – no topic of conferences; block billing; nonrecoverable time for administrative exhaustion;
03/20/01	Theresa L. Groh	8.0	Review Defendant's motion to stay; review Defendant's Answer; conference with J. Murdock re: client affidavit; research stay issues	Duplicative/redundant billing; nonrecoverable time for administrative exhaustion; block billing
03/21/01	Theresa L. Groh	5.5	Draft letter to Wolf re: enclosures, status, strategy; phone conference with clients; research stay issues	Vague – no topic of conference; block billing; nonrecoverable time for administrative exhaustion
03/22/01	John C. Murdock	7.75	Review Defendant's motion to stay; conference with T. Groh; research exhaustion issues; draft/edit/review of memo opposing motion to stay; letter to Roberts	Vague – no topic of conference and no subject of letter; excessive/duplicative/redundant billing; nonrecoverable time for administrative exhaustion; block billing
03/22/01	Theresa L. Groh	10.0	Review Defendant's motion to stay; conference with J. Murdock; research exhaustion issues; draft/edit/review of memo opposing motion to stay	Vague – no topic of conference; excessive/duplicative/redundant billing; nonrecoverable time for administrative exhaustion; block billing
03/23/01	John C. Murdock	5.5	Review Defendant's motion to stay; conference with T. Groh; research exhaustion issues; draft/edit/review of memo opposing motion to stay	Vague – no topic of conference; excessive/duplicative/redundant billing; nonrecoverable time for administrative exhaustion; block billing
03/23/01	Theresa L. Groh	6.5	Review Defendant's motion to stay; conference with J. Murdock; research exhaustion issues; draft/edit/review of memo opposing motion to stay	Vague – no topic of conference; excessive/duplicative/redundant billing; nonrecoverable time for administrative exhaustion; block billing
03/29/01	Theresa L. Groh	2.5	Phone conferences with M. Wolf and witness;	Vague – no topic of conferences;

			draft Peters affidavit; phone conference with clients	nonrecoverable time for administrative exhaustion; block billing
03/30/01	Theresa L. Groh	.75	Draft letter to Wolf re: Peters affidavit; conference with J. Murdock re: client affidavit	Nonrecoverable time for administrative exhaustion; block billing
03/03/01	John C. Murdock	1.5	Phone conference with client; draft and edit Noonan affidavit re: stay motion; conference with T. Groh	Vague – no topic of conferences; nonrecoverable time for administrative exhaustion; block billing
04/04/01	Theresa L. Groh	4.0	Review Wolf fax; research; draft and review memorandum in opposition to motion to stay; conference with J. Murdock	Vague – no topic of fax, research, or conference; nonrecoverable time for administrative exhaustion; block billing
04/04/01	John C. Murdock	3.5	Research; draft and review memorandum in opposition to motion to stay; conference with T. Groh	Vague – no topic of research or conference; excessive/duplicative /redundant billing; nonrecoverable time for administrative exhaustion; block billing
04/05/01	Theresa L. Groh	4.0	Research, draft and review memorandum in opposition to motion to stay; conference with J. Murdock	Vague – no topic of research or conference; excessive/duplicative /redundant billing; nonrecoverable time for administrative exhaustion; block billing
04/05/01	John C. Murdock	2.5	Research, draft and review memorandum in opposition to motion to stay; conference with T. Groh	Vague – no topic of research or conference; excessive/duplicative /redundant billing; nonrecoverable time for administrative exhaustion; block billing
04/06/01	Theresa L. Groh	6.0	Research, draft and review memorandum in opposition to motion to stay; conference with J. Murdock	Vague – no topic of research or conference; excessive/duplicative /redundant billing; nonrecoverable time for administrative exhaustion; block billing
04/06/01	John C. Murdock	1.5	Research, draft and review memorandum in opposition to motion to stay; conference with T. Groh	Vague – no topic of research or conference; excessive/duplicative /redundant billing; nonrecoverable time for administrative exhaustion; block billing
04/09/01	Theresa L. Groh	7.0	Review Defendant's motion to stay; conference	Vague – no subject of conference;

			with J. Murdock; research exhaustion issues; finalize memo opposing motion to stay	insufficient description of research; excessive/duplicative /redundant billing for research and drafting of response to motion; nonrecoverable time for administrative exhaustion; block billing
04/09/01	John C. Murdock	6.5	Review Defendant's motion to stay; conference with T. Groh; research exhaustion issues; finalize memo opposing motion to stay	Vague – no topic of conference; insufficient description of research; excessive/duplicative /redundant billing for research and drafting of response to motion; nonrecoverable time for administrative exhaustion; block billing
04/10/01	Theresa L. Groh	.5	Phone conference with clients	Vague – no topic of conference; nonrecoverable time for administrative exhaustion
04/12/01	Theresa L. Groh	.75	Conference with J. Murdock	Vague – no topic of conference; nonrecoverable time for administrative exhaustion
04/12/01	John C. Murdock	.75	Conference with T. Groh re: stay issues	Excessive/duplicative billing for conferences between attorneys; nonrecoverable time for administrative exhaustion
04/16/01	Theresa L. Groh	.5	Draft Noonan and Dalesandro letter re: status	Nonrecoverable time for administrative exhaustion
04/17/01	Theresa L. Groh	.5	Draft letters to employees and Dalesandro re: status and enclosures	Nonrecoverable time for administrative exhaustion
04/17/01	John C. Murdock	.25	Draft and edit employee letter	Nonrecoverable time for administrative exhaustion
04/23/01	Theresa L. Groh	3.5	Review Defendant's Reply in Support of Motion to Stay and correspondence re: same; conference with J. Murdock; research same; draft letter to Wolf re: enclosed pleadings and case status; phone conference with clients	Vague – no topic of conferences; excessive/duplicate billing for conferences between attorneys; nonrecoverable time for administrative exhaustion; block billing
04/23/01	John C. Murdock	1.5	Review Defendant's Reply in Support of Motion to Stay and correspondence re: same;	Vague – no topic of conferences; nonrecoverable time for administrative

			conference with T. Groh	exhaustion; excessive/duplicative time for attorney conferences; block billing
04/24/01	Theresa L. Groh	.5	Draft Betz, Noonan and Dalesandro letter re: status	Nonrecoverable time for administrative exhaustion
04/26/01	Theresa L. Groh	.75	Draft and edit letter to witness	Nonrecoverable time for administrative exhaustion; vague – no subject of letter
04/27/01	Theresa L. Groh	3.0	Review Order Granting Motion to Stay; conference with J. Murdock; phone conference with clients re: same; phone conference with M. Wolf re: same; review files	Nonrecoverable time for administrative exhaustion Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference; Block billing
04/27/01	John C. Murdock	1.5	Review Order Granting Motion to Stay; status/strategy conference with T. Groh	Nonrecoverable time for administrative exhaustion Excessive/duplicative billing for conferences between attorneys; excessive/duplicate billing for same work by two attorneys; Vague – no topic of conference; Block billing
04/30/01	Theresa L. Groh	7.0	Phone conference with clients; phone conference with M. Wolf; review Wolf fax; meet with witness; notes re: meeting with witness	Nonrecoverable time for administrative exhaustion Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference – and excessive meeting time; Block billing
05/01/01	Theresa L. Groh	2.0	Draft Noonan and Dalesandro letter re: status; notes to file re: meeting with witness and strategy	Nonrecoverable time for administrative exhaustion; Block billing
05/17/01	Theresa L. Groh	.25	Phone conference with clients	Nonrecoverable time for administrative exhaustion; Vague – no topic of conference
05/18/01	Theresa L. Groh	.75	Phone conference with clients; phone conference with M. Wolf	Nonrecoverable time for administrative exhaustion; Vague – no topic of conferences; duplicative billing for attorney conferences; block billing

05/22/01	Theresa L. Groh	1.5	Draft letter to Dalesandro re: enclosure; draft form letter to former IP employees	Nonrecoverable time for administrative exhaustion
05/24/01	Theresa L. Groh	.25	Phone conference with clients	Nonrecoverable time for administrative exhaustion; Vague – no topic of conference
05/28/01	Theresa L. Groh	2.5	Research and draft discovery requests; review evidence and notes re: same	Nonrecoverable time for administrative exhaustion; vague – no topic of research
05/29/01	Theresa L. Groh	4.0	Research and draft discovery requests; review evidence and notes re: same	Nonrecoverable time for administrative exhaustion; vague – no topic of research
05/30/01	Theresa L. Groh	7.0	Research and draft discovery requests; review evidence and notes re: same	Nonrecoverable time for administrative exhaustion; vague – no topic of research
05/31/01	Theresa L. Groh	4.0	Research and draft discovery requests; review evidence and notes re: same	Nonrecoverable time for administrative exhaustion; vague – no topic of research; excessive billing for drafting discovery
06/01/01	Theresa L. Groh	2.5	Research and draft discovery requests; review evidence and notes re: same	Nonrecoverable time for administrative exhaustion; vague – no topic of research; excessive billing for drafting discovery
06/02/01	Theresa L. Groh	7.0	Research and outline legal standard for appeal to district court; research and outline discovery issues; research and draft discovery requests; review evidence and notes re: same	Nonrecoverable time for administrative exhaustion; vague – no topic of research; excessive billing for drafting discovery; block billing
06/04/01	Theresa L. Groh	10.0	Phone conference with clients; review objections, responses and documents produced in response to discovery requests; research and draft discovery requests; review evidence and notes re: same; letter to M. Wolf	Nonrecoverable time for administrative exhaustion; Vague – no topic of conference and no topic of research; excessive billing for drafting/reviewing discovery; block billing
06/05/01	Theresa L. Groh	8.5	Draft letter to witness; draft Roberts letter re: Request for Documents/Records and evidence issue; draft letter to Warner re: request for documents, records and info; review objections,	Nonrecoverable time for administrative exhaustion; duplicative/excessive billing for same tasks; block billing

			responses and documents produced in response to discovery requests; research and draft discovery requests; review evidence and notes re: same	
06/06/01	Theresa L. Groh	.5	Draft letter to Wolf re: case status; review objections, responses and documents produced in response to discovery requests	Nonrecoverable time for administrative exhaustion; duplicative billing for same tasks
06/12/01	Theresa L. Groh	1.5	Phone conference with witness	Nonrecoverable time for administrative exhaustion; Vague – no topic of conference; excessive/ duplicative billing by two attorneys
06/12/01	John C. Murdock	1.5	Phone conference with witness	Nonrecoverable time for administrative exhaustion; Vague – no topic of conference; excessive/ duplicative billing by two attorneys
06/13/01	Theresa L. Groh	.5	Emails from/to Cooper re: retention and status of case	Nonrecoverable time for administrative exhaustion
06/14/01	Theresa L. Groh	.75	Draft Class Representatives Rights/Responsibilities re: Cooper; letter to Cooper re: same	Nonrecoverable time for administrative exhaustion
06/18/01	Theresa L. Groh	.75	Draft letter to Warner re: request for information	Nonrecoverable time for administrative exhaustion
06/19/01	Theresa L. Groh	1.0	Draft letter to Warner re: request; review fax from Warner re: response to request	Nonrecoverable time for administrative exhaustion
06/20/01	Theresa L. Groh	2.5	Draft Roberts letter re: evidence issue; draft Warner letter re: request for documents/information; phone conference with clients	Nonrecoverable time for administrative exhaustion; excessive/duplicative billing to draft letter; block billing
06/25/01	Theresa L. Groh	.25	Review Roberts letter re: evidence concern	Nonrecoverable time for administrative exhaustion
07/02/01	Theresa L. Groh	.25	Draft letter to Florio and Warner re: extension	Nonrecoverable time for administrative exhaustion
07/05/01	Theresa L. Groh	4.0	Meet with clients	Nonrecoverable time for administrative exhaustion; Vague – no topic of meeting; excessive meeting time absent explanation/description

07/06/01	Theresa L. Groh	3.0	Review 07/06/01 letter from Warner re: extension; draft fee agreements for new clients and prepare for meeting	Nonrecoverable time for administrative exhaustion; Vague – no explanation of preparation needed for meeting or topic of meeting; Block billing
07/09/01	Theresa L. Groh	5.5	Prepare for and meet with additional clients and employees	Nonrecoverable time for administrative exhaustion; Vague – insufficient explanation of preparation needed and no topic of meeting; excessive meeting time absent explanation/description
07/12/01	Theresa L. Groh	1.25	Draft letter to Florio, Warner and Karre re: extension; phone conference with clients	Nonrecoverable time for administrative exhaustion; Vague – no topic of conference
07/30/01	Theresa L. Groh	2.0	Review 07/30/01 letter from Warner re: response to 06/05/01 request; notes to file re: same	Nonrecoverable time for administrative exhaustion
08/02/01	Theresa L. Groh	1.0	Phone conference with clients	Nonrecoverable time for administrative exhaustion; Vague – no topic of conference; excessive time for conferencing
08/03/01	Theresa L. Groh	6.0	Draft letter to Florio and Warner re: request for full production of documents/information (case law cited); research and outline legal issues for appeal to district court	Nonrecoverable time for administrative exhaustion; nonrecoverable time for unnecessary / irrelevant discovery; block billing
08/10/01	Theresa L. Groh	.5	Review Warner 08/10/01 letter re: request for additional information	Nonrecoverable time for administrative exhaustion
08/17/01	Theresa L. Groh	1.0	Draft letter to Warner re: request for information with supporting argument; letter to M. Wolf	Nonrecoverable time for administrative exhaustion; Vague – no topic of letter; Block billing
08/22/01	Theresa L. Groh	.75	Review letter from Warner re: obligation of Plan Administrator	Nonrecoverable time for administrative exhaustion; excess billing time for review
08/28/01	Theresa L. Groh	5.0	Research legal issues re: appeal to district court	Nonrecoverable time for administrative exhaustion
09/06/01	Stephanie Vaaler	.25	Phone conference with courthouse re: status of ERISA pleadings	Nonrecoverable time for administrative exhaustion

09/07/01	Theresa L. Groh	1.0	Phone conference with clients	Nonrecoverable time for administrative exhaustion; Vague – no topic of conference;
09/10/01	Theresa L. Groh	.5	Draft letter to Florio, Warner and Karre re: extension for appeal	Nonrecoverable time for administrative exhaustion
09/18/01	Theresa L. Groh	1.0	Review letter from Warner re: 30 day extension and request for information/materials; phone conference with clients; phone conference with M. Wolf	Nonrecoverable time for administrative exhaustion; Vague – no topic of conferences; duplicative / excessive attorney conferences; block billing
09/25/01	Theresa L. Groh	1.5	Draft Index to Administrative Appeal (binder)	Nonrecoverable time for administrative exhaustion; noncompensable clerical work
10/04/01	Theresa L. Groh	7.0	Draft letter to Warner/Florio re: Assets Purchase Agreement; research and outline legal issues for appeal to district court; letter to M. Wolf	Nonrecoverable time for administrative exhaustion; Block billing
10/05/01	Theresa L. Groh	.75	Meeting with S. Vaaler re: distribution of affidavits; fax letter to M. Wolf; email to clients re: affidavits	Nonrecoverable time for administrative exhaustion
10/05/01	Stephanie Vaaler	1.0	Meeting with T. Groh re: distribution of affidavits; phone conference with clients re: email correspondence; update client files	Nonrecoverable time for administrative exhaustion; duplicative / excessive billing time for conferences; Block billing
10/08/01	Theresa L. Groh	7.0	Email to S. Vaaler re: email addresses; draft affidavits of clients and employees; phone conferences with same	Nonrecoverable time for administrative exhaustion; Vague – no topic of conference; Block billing
10/08/01	Stephanie Vaaler	.50	Phone conferences with clients re: email correspondence; emails to T. Groh re: same	Nonrecoverable time for administrative exhaustion
10/10/01	Theresa L. Groh	11.0	Organize and assemble exhibits and index re: support for claim of benefits; draft affidavits for Theobald, Smith, Noonan, Knobloch, Keating, Johnson, Hobbs, Cooper, Dempsey, Dalesandro; phone conferences with same re: affidavits; draft appeal of denial of benefits	Nonrecoverable time for administrative exhaustion; noncompensable time for clerical work; Block billing
10/11/01	Theresa L. Groh	12.0	Review Warner letter re: response to request for documents; phone conferences with clients re:	Nonrecoverable time for administrative exhaustion; vague – no

			affidavits; draft appeal of denial of benefits; phone conference with M. Wolf	topic of conference; excessive / duplicative billing for attorney conferences; block billing
10/12/01	Theresa L. Groh	12.0	Finalize exhibits and arguments in support of claims for benefits; draft appeal of denial of benefits	Nonrecoverable time for administrative exhaustion; Block billing
10/13/01	Theresa L. Groh	6.0	Draft appeal of denial of benefits	Nonrecoverable time for administrative exhaustion
10/14/01	Theresa L. Groh	10.0	Draft appeal of denial of benefits	Nonrecoverable time for administrative exhaustion
10/15/01	Theresa L. Groh	7.0	Finalize 26 page letter to P. Karre re: appeal	Nonrecoverable time for administrative exhaustion
10/15/01	Stephanie Vaaler	1.75	Travel to Spitzfaden; bind brief	Nonrecoverable time for administrative exhaustion; clerical nonbillable/noncompensable time and noncompensable travel time; no explanation of travel; block billing
10/17/01	Stephanie Vaaler	.50	File affidavits	Nonrecoverable time for administrative exhaustion; clerical nonbillable/noncompensable time
10/22/01	Theresa L. Groh	.75	Review letter of S. Cooper re: electronic correspondence; phone conference with clients	Nonrecoverable time for administrative exhaustion; Vague – no topic of conference; Block billing
11/05/01	Theresa L. Groh	.50	Phone conference with clients	Nonrecoverable time for administrative exhaustion; Vague – no topic of conference
11/06/01	Theresa L. Groh	6.0	Draft witness affidavit; draft appeal letter	Nonrecoverable time for administrative exhaustion; Block billing
12/07/01	Theresa L. Groh	5.0	Draft and revise Motion to Lift Stay; review letter of P. Karre re: denial of appeal; phone conference with clients	Nonrecoverable time for administrative exhaustion; Vague – no topic of conference; Block billing
12/07/01	John C. Murdock	2.75	Revise Motion to Lift Stay	Nonrecoverable time for administrative exhaustion
12/10/01	Theresa L. Groh	9.0	Revise Motion to Lift Stay; client letter and Roberts letter (Motion to Lift Stay); draft client	Nonrecoverable time for administrative exhaustion; Block

			letter re: denial of appeal decision; draft discovery requests	billing
12/11/01	Theresa L. Groh	2.0	Conference with J. Murdock re: Court hearing and conference re: lifting the stay and strategy; phone conference with clients	Nonrecoverable time for administrative exhaustion Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference with clients; Block billing
12/11/01	John C. Murdock	1.50	Conference with T. Groh re: Court hearing and conference re: lifting the stay and strategy	Nonrecoverable time for administrative exhaustion Excessive/duplicative billing for conferences between attorneys
01/11/02	Theresa L. Groh	5.0	Prepare for and attend conference and hearing on motion to lift stay; conference with J. Murdock; phone conference with clients	Nonrecoverable time for administrative exhaustion Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference; Block billing
01/11/02	John C. Murdock	3.25	Prepare for and attend conference and hearing on motion to lift stay; conference with T. Groh	Nonrecoverable time for administrative exhaustion Excessive/duplicative billing for conferences between attorneys; Excessive / duplicate billing for attendance of two attorneys at hearing; Vague – no topic of conference; Block billing
01/14/02	Stephanie Vaaler	.25	Conference with T. Groh re: IP employee project	Nonrecoverable time for administrative exhaustion
01/14/02	Theresa L. Groh	2.0	Conference with S. Vaaler re: IP employee project; review Court Order granting Plaintiffs' Motion to Lift Stay and calendar settings; conference with J. Murdock; phone conference with clients	Nonrecoverable time for administrative exhaustion Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference with J. Murdock or clients; Block billing
01/14/02	John C. Murdock	1.0	Review Court Order granting Plaintiffs' Motion to Lift Stay and calendar settings; conference with	Nonrecoverable time for administrative exhaustion

			T. Groh	Excessive/duplicative billing for conferences between attorneys; excessive/duplicative billing for same tasks; Vague – no topic of conference; Block billing
01/15/02	Stephanie Vaaler	2.0	Draft table of employee profiles	
01/16/02	Stephanie Vaaler	4.0	Draft table of employee profiles	
01/22/02	Theresa L. Groh	5.0	Review 01/21/02 Younger letter re: ERISA and 6 th Circuit procedures; research	Vague – no description/topic of research; Block billing
01/23/02	Theresa L. Groh	5.0	Research issues to submit to Court	Vague – no description/topic of research
01/24/02	Theresa L. Groh	7.0	Research issues to submit to Court	Vague – no description/topic of research
02/13/02	Theresa L. Groh	.50	Review 02/13/02 Younger letter re: class issues	
03/04/02	John C. Murdock	4.50	Research; draft and edit Plaintiffs' Informal Interrogatories and Document Requests re: Class Certification	Vague – no description/topic of research; Block billing
03/15/02	Theresa L. Groh	2.50	Draft Younger letter outlining areas of dispute; phone conference with clients	Vague – no topic of conference; block billing
03/28/02	John C. Murdock	2.0	Draft/revise/edit Younger letter re: discovery and class certification	Excessive/duplicative billing by two partners for same task
04/11/02	John C. Murdock	.50	Review Younger letter re: issue involving exhausted administrative remedies	Excessive review time
04/12/02	John C. Murdock	5.75	Draft and edit Agreed Entry re: Class Certification issues; class issues research analysis; draft Younger letter re: position on claims procedure; research same	Block billing
04/12/02	Stephanie Vaaler	.50	Court filing; Agreed Entry	Nonbillable/noncompensable clerical time
04/25/02	Theresa L. Groh	2.50	Draft and edit Younger letter re: court conference; class definition and discovery issues	Block billing
04/30/02	Theresa L. Groh	3.50	Review 04/30/02 Younger letter re: informal discovery requests and attached protective order; conference with John Murdock; phone conference with clients	Excessive/duplicative billing for conferences between attorneys and redundant/excessive review by two attorneys; Vague – no topic of conferences; Block billing

04/30/02	John C. Murdock	1.50	Review Younger letter re: informal discovery requests and attached protective order; conference with TLG	Excessive/duplicative billing for conferences between attorneys and redundant/excessive review by two attorneys; Vague – no topic of conference; Block billing
05/01/02	John C. Murdock	8.50	Draft Plaintiffs' Interrogatories and Document Requests Directed to Class Action Certification; edit Plaintiffs' Interrogatories and Requests Related to Merits; draft Younger letter re: class member issue and discovery; prepare for Court conference	Vague – no explanation of preparation; Block billing
05/01/02	Theresa L. Groh	10.0	Draft Plaintiffs' Interrogatories and Document Requests Direct to the Merits; edit the discovery related to class certification; letter to Younger re: merits discovery; prepare for Court conference	Excessive/duplicate time billed by two partners for same tasks; vague - no explanation of preparation; Block billing
05/02/02	John C. Murdock	4.25	Draft and edit McElligott letter re: discovery objections; prepare for and attend Court conference	Vague – no explanation of preparation; excessive time billed; Block billing
05/02/02	Theresa L. Groh	7.50	Revise, finalize and serve all discovery requests related to merits and class certification; prepare for and attend Court conference	Vague – no explanation of preparation; excessive time billed; Block billing
05/10/02	Theresa L. Groh	2.50	Review Protective Order; conference with JCM re: same; draft letter to Roberts re: enclosed Agreed Protective Order	Excessive/duplicative billing for conferences between attorneys; Block billing
05/10/02	John C. Murdock	2.0	Conference with T. Groh re: Protective Order; review same	Excessive/duplicative billing for conferences between attorneys
05/17/02	Theresa L. Groh	2.50	Review Roberts letter and enclosed IP Objections to Pls' Disc. Req. Related to Merits; phone conference with clients	Vague – no topic of conference; Block billing
05/20/02	Theresa L. Groh	2.50	Meeting with S. Vaaler re: administrative record indexing project; phone conference with Doggett re: witnesses, evidence and legal issues	Block billing
05/20/02	Stephanie Vaaler	7.0	Meeting with T. Groh re: administrative record indexing project; retrieve; review and index administrative record	Excessive/duplicate time billed for meeting; Block billing
05/21/02	Theresa L. Groh	6.0	Draft Doggett letter; review Roberts letter and	Nonrecoverable time for pursuit of

			enclosed class issue discovery objectives; draft Motion to Compel Discovery	unnecessary and irrelevant discovery and motion; Block billing
05/22/02	Theresa L. Groh	7.0	Edit Motion to Compel Discovery; draft affidavit of T. Groh and J. Murdock; draft subpoena Schedule A	Nonrecoverable time for pursuit of unnecessary and irrelevant discovery and motion; Block billing
05/23/02	Theresa L. Groh	4.0	Draft witness affidavits; draft and edit Lechner letter re: Smart Papers subpoena; phone conference with clients	Vague – no topic of conference; Block billing
05/23/02	John C. Murdock	1.0	Draft subpoena schedule	
05/23/02	Stephanie Vaaler	.25	Edit index to administrative record	Noncompensable clerical work
06/03/02	Theresa L. Groh	1.0	Review letter of Miraglia and enclosed responses to Def. to Pl's Discovery Requests	
06/05/02	Theresa L. Groh	1.0	Review Lechner letter re: objections of Smart Papers	Excessive review time.
06/06/02	Theresa L. Groh	.50	Review letter of Younger re: IP's position on Smart's objections	
06/07/02	Theresa L. Groh	4.50	Review Administrative Record	
06/08/02	Theresa L. Groh	8.0	Review Administrative Record; review Defendant's Motion for Judgment on Administrative Record	Block billing.
06/09/02	Theresa L. Groh	10.0	Review Administrative Record; research	Vague – no description/topic of research; excessive review time; Block billing
06/11/02	Theresa L. Groh	11.0	Review Defendant's Motion for Judgment on Administrative Record; research	Vague – no description/topic of research; Block billing
06/11/02	John C. Murdock	8.50	Review Defendant's Motion for Judgment on Administrative Record; research	Vague and excessive/duplicative billing for undefined research and review of motion; Block billing
06/12/02	Theresa L. Groh	14.0	Review Defendant's Motion for Judgment on Administrative Record; conference with JCM re: same; research	Vague and excessive/duplicative billing for undefined research and review of motion and attorney conferences; Block billing
06/12/02	John C. Murdock	7.25	Review Defendant's Motion for Judgment on Administrative Record; conference with T. Groh re: same	Excessive/duplicative billing for attorney conferences and review time; Block billing
06/13/02	John C. Murdock	6.0	Review/analyze Defendant's Motion for Judgment	Vague and excessive/duplicative

			on Administrative Record; follow up research	billing for undefined research and review of motion; Block billing
06/13/02	Theresa L. Groh	12.0	Meeting with S. Vaaler re: research and organization of Administrative Record; research re: Defendant's Motion for Judgment	Vague and excessive/duplicative billing for undefined research and review of motion and conferences; Block billing
06/13/02	Stephanie Vaaler	3.0	Meeting with T. Groh re: research and organization of Administrative Record; research	Vague and excessive/duplicative billing for undefined research and conferences; Block billing
06/14/02	Stephanie Vaaler	3.0	Research	Vague – no description/topic of research conducted
06/14/02	Theresa L. Groh	12.0	Research re: Defendant's Motion for Judgment	Vague – insufficient description/topic of research conducted
06/15/02	Theresa L. Groh	12.0	Research re: Defendant's Motion for Judgment; conference with J. Murdock	Excessive/duplicative billing for conferences between attorneys and for same/overlapping tasks performed; Vague – no topic of conference and insufficient description/topic of research conducted; Block billing
06/15/02	John C. Murdock	12.0	Conference with T. Groh re: research and motion for judgment; review/analysis of Defendant's Motion for Judgment	Excessive/duplicative billing for conferences between attorneys and for same/overlapping tasks performed; excessive time billed for review/analysis of motion; Block billing
06/16/02	John C. Murdock	4.50	Review/analysis of Defendant's Motion for Judgment on Administrative Record; with follow up research	Vague and excessive/duplicative/redundant billing for undefined research and review of motion
06/18/02	John C. Murdock	4.25	Meeting with S. Vaaler re: review of administrative record; draft letter to Roberts re: evidence issue; review of administrative record	Excessive/duplicate billing by two attorneys and paralegal for same tasks; Block billing
06/18/02	Stephanie Vaaler	5.0	Conference with J. Murdock re: review of administrative record; review administrative record and prepare chart	Excessive/duplicate billing for conferences; Block billing
06/18/02	Theresa L. Groh	14.0	Research issues re: Defendant's Motion for Judgment; Plaintiffs' entitlement to judgment; Plaintiffs' entitlement to discovery; phone	Vague – insufficient description of research conducted; excessive billing for overlapping tasks; Block billing

			conference with clients and other employees; draft affidavits; phone conference with clients	
06/19/02	Theresa L. Groh	14.0	Draft client letter re: case status (IP Motion, Motion to Compel, Opp. Memo); research issues re: Defendant's Motion for Judgment, Plaintiffs' entitlement to judgment; Plaintiffs' entitlement to discovery; phone conferences with clients and other employees; draft affidavits	Vague – no topic of conferences; insufficient description of research conducted; Block billing
06/19/02	Stephanie Vaaler	8.0	Review administrative record and prepare chart	Excessive/duplicative billing
06/20/02	Stephanie Vaaler	7.50	Review administrative record and prepare chart; pull relevant documents re: administrative record	Excessive/duplicative billing
06/20/02	Theresa L. Groh	11.0	Research issues re: Defendant's Motion for Judgment, Plaintiffs' entitlement to judgment; Plaintiffs' entitlement to discovery; phone conferences with clients and other employees; draft affidavits	Vague – no topic of conferences; insufficient description of research conducted; excessive billing for conferences in absence of explanation; Block billing
06/21/02	Stephanie Vaaler	.50	Conference with C. Pence re: charts	Vague – insufficient description.
06/21/02	Theresa L. Groh	12.0	Research issues re: Defendant's Motion for Judgment; Plaintiff's entitlement to judgment; Plaintiffs' entitlement to discovery; phone conferences with clients and other employees; draft affidavits	Vague – no topic of conferences; insufficient description of research conducted; excessive billing for conferences in absence of explanation; Block billing.
06/24/02	Theresa L. Groh	.50	Email to employee re: status	
06/25/02	Theresa L. Groh	12.0	Research issues re: Defendant's Motion for Judgment, Plaintiffs' entitlement to judgment; Plaintiffs' entitlement to discovery; phone conferences with clients and other employees; draft affidavits	Vague – no topic of conference; insufficient description of research conducted; duplicative/redundant/entries; block billing
06/26/02	Theresa L. Groh	14.0	Draft Motion for Extension and Entry re: same; letter to Roberts re: same; research issues re: Defendant's Motion for Judgment, Plaintiffs' entitlement to judgment; Plaintiffs' entitlement to discovery; phone conferences with clients and other employees; draft affidavits; conference with J. Murdock re: class certification research and brief sections and strategy	Excessive/duplicative billing for conferences between attorneys; insufficient description of research conducted; duplicative/redundant entries; Block billing

06/26/02	John C. Murdock	9.50	Draft correspondence to Roberts re: Joint Motion; research regarding Plaintiffs' Motion for Class Certification; conference with T. Groh re: class certification research and brief sections and strategy	Excessive/duplicative billing for conferences between attorneys; Block billing
06/27/02	Theresa L. Groh	1.50	Correspondence to Younger/McElligott; phone conference with witness re: affidavit	Block billing.
06/27/02	John C. Murdock	8.75	Draft Dalesandro affidavit re: class representative; continued research/analysis for motion to certify class	Block billing; insufficient description of duplicative entry for research/analysis.
06/28/02	Theresa L. Groh	3.0	Draft witness affidavit; phone conferences with witness re: same	Vague – no subject/explanation of affidavit
06/28/02	John C. Murdock	9.25	Revise exhibits (charts) prepared by S. Vaaler; administrative record review; draft Noonan affidavit in support of designation as class representative	Vague/duplicative entry for "administrative record review;" Block billing
06/29/02	John C. Murdock	10.50	Edit Bales and Beecher affidavits; research and draft Plaintiffs' Motion for Class Certification; conference with T. Groh re: class certification research and brief sections and strategy	Excessive/duplicative billing for conferences between attorneys; insufficient explanation of research; Block billing
06/29/02	Theresa L. Groh	13.0	Research issues re: Defendant's Motion for Judgment, Plaintiffs' entitlement to judgment; Plaintiffs' entitlement to discovery; phone conference with clients and other employees; draft affidavits; conference with J. Murdock re: class certification research and brief sections and strategy	Excessive/duplicative billing for conferences between attorneys; duplicative/redundant/excessive time entries by two partners for same tasks; Block billing
06/30/02	Theresa L. Groh	14.0	Research issues re: Defendant's Motion for Judgment, Plaintiffs' entitlement to judgment; Plaintiffs' entitlement to discovery; phone conferences with clients and other employees; draft affidavits; conference with J. Murdock re: class certification research and brief sections and strategy	Excessive/duplicative billing for conferences between attorneys; insufficient description of research conducted; vague – no topic of conferences with clients; excessive/unwarranted conferences absent explanation; Block billing
06/30/02	John C. Murdock	11.50	Draft, and supplemental research, Plaintiffs' Motion for Class Certification; conference with T.	Excessive/duplicative billing for conferences between attorneys;

			Groh re: class certification research and brief sections and strategy	insufficient description of research conducted; Block billing
07/01/02	Theresa L. Groh	12.0	Prepare cover for Plaintiffs' Exhibits in Support of Motion to Compel; research issues re: Defendant's Motion for Judgment, Plaintiffs' entitlement to judgment; Plaintiffs' entitlement to discovery; phone conferences with clients and other employees; draft affidavits; conference with J. Murdock re: class certification research and brief sections and strategy	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conferences with clients; nonrecoverable time for irrelevant discovery and motion to compel same; duplicative/redundant / excessive time entries for same work performed; Block billing
07/01/02	John C. Murdock	7.25	Meeting with S. Vaaler re: exhibit (charts) revisions and review of same; continued draft (and supplemental research) of Plaintiffs' Motion for Class Certification; conference with T. Groh re: class certification research and brief sections and strategy	Excessive/duplicative billing for conferences between attorneys and duplicative/redundant / excessive time entries for same work performed; nonrecoverable time for irrelevant discovery and motion to compel same; Block billing
07/01/02	Stephanie Vaaler	7.0	Meeting with J. Murdock re: project involving revision of charts; revise charts for J. Murdock; review brief and prepare index of cases; prepare exhibit book for brief	Duplicative/excessive billing for conferences; Block billing
07/02/02	Theresa L. Groh	12.0	Draft Opposition to Judgment Motion; research issues re: Defendant's Motion for Judgment, Plaintiffs' entitlement to judgment; Plaintiffs' entitlement to discovery; phone conferences with clients and other employees; draft affidavits; conference with J. Murdock re: class certification research and brief sections and strategy	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conferences with clients; nonrecoverable time for irrelevant discovery and motion to compel same; duplicative/redundant / excessive time entries for same work performed; Block billing
07/02/02	John C. Murdock	10.5	Assist in draft/edit Opposition to Judgment Motion; research and final edits to Plaintiffs' Motion for Class Certification; conference with T. Groh re: class certification research and brief sections and strategy	Excessive/duplicative billing for conferences between attorneys; Block billing
07/02/02	Stephanie Vaaler	7.50	Prepare pleadings; review brief for cases and prepare list of cases (by section); auto-cited	

07/03/02	Theresa L. Groh	14.0	Draft client letter re: case development; draft Noonan/Dalesandro letter re: same; draft and edit witness letter re: same; prepare Compel Merits insert; prepare Motion to Compel Production (by Smart Papers) Pursuant to Subpoena; prepare Motion to Compel Discovery Related to Merits; draft Groh affidavit; draft letter to Younger/McElligott, Roberts re: enclosures and Cross-Motion; Lechner letter re: enclosed Motion to Compel	Nonrecoverable time for irrelevant discovery and motion to compel same; Block billing
07/03/02	Stephanie Vaaler	7.50	Copy and bind brief and exhibits; prepare index of JCM cases, auto-cited cases; file brief; hand deliver copy to Graydon, Head	Block billing; clerical nonbillable work
07/08/02	Theresa L. Groh	1.0	Draft letter to Miraglia re: Motion to Compel; phone conference with clients	Nonrecoverable time for irrelevant discovery and motion to compel same; Block billing; Vague – no topic of conference
07/15/02	Stephanie Vaaler	1.50	Copy cases; draft indices and organize binder of cited cases	Clerical nonbillable work
07/16/02	Stephanie Vaaler	3.50	Copy cases; draft indices and organize binder of cited cases	Clerical nonbillable work; excessive time billed
07/23/02	Theresa L. Groh	3.0	Review Roberts 07/23/02 letter w/attached Supplement to Admin. Record; IP's Response to Plaintiffs' Motion to Compel; IP's Reply to Pls' Memo. In Opp.	Nonrecoverable time for motion to compel irrelevant discovery; Block billing
07/24/02	Theresa L. Groh	9.0	Review Defendant's Supplement to the Administrative Record; review Defendant's Response to Motion to Compel Discovery Related to the Merits; conference with J. Murdock; review and research Defendant's Opposition to Plaintiffs' Motion for Judgment	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference; nonrecoverable time for motion to compel irrelevant discovery; Block billing
07/24/02	John C. Murdock	3.25	Review Defendant's Response to Plaintiffs' Motion to Compel Discovery Related to Class Certification; strategy conference with TLG	Excessive/duplicative billing for conferences between attorneys; duplicative/excessive billing for same task; nonrecoverable time for motion to compel irrelevant discovery;

				Vague – insufficient description of topic of conference; Block billing
07/25/02	Theresa L. Groh	11.0	Review Defendant's Supplement to the Administrative Record; review Defendant's Response to Motion to Compel Discovery Related to the Merits; conference with J. Murdock; review and research Defendant's Opposition to Plaintiffs' Motion for Judgment	*Duplicate of 07/24/02 billing entries; Excessive/duplicative billing for same tasks and for conferences between attorneys; nonrecoverable time for motion to compel irrelevant discovery; Vague – no topic of conference; Block billing
07/25/02	John C. Murdock	7.25	Review/analysis of Defendant's reply/opposition memorandum; conference with T. Groh	Excessive/duplicative billing for conferences between attorneys and same tasks performed by both; excessive/redundant time for review of brief; Vague – no topic of conference; Block billing
07/25/02	Stephanie Vaaler	4.0	Pull cases cited in Defendant's motions; organize binder of Defendant's cited cases	
07/26/02	Theresa L. Groh	10.0	Review and research Defendant's Opposition to Plaintiffs' Motion for Judgment	Duplicative/excessive/redundant billing for tasks; vague – insufficient description of research.
07/26/02	John C. Murdock	6.50	Research/draft analysis and review of Administrative Record for Reply Memorandum in Support of Plaintiffs' Motion for Judgment	
07/27/02	Theresa L. Groh	12.0	Research, draft and revise Reply Memorandum in Support of Plaintiffs' Motion for Judgment; Plaintiffs' Motion to Compel	Nonrecoverable time for motion to compel irrelevant discovery; block billing.
07/28/02	Theresa L. Groh	14.0	Research, draft and revise Reply Memorandum in Support of Plaintiffs' Motion for Judgment; Plaintiffs' Motion to Compel	Nonrecoverable time for motion to compel irrelevant discovery; block billing.
07/30/02	Theresa L. Groh	14.0	Review Hollingsworth letter with enclosed Non-Party Smart Papers Memo in Opposition to Plaintiffs' Motion to Compel	Nonrecoverable time for motion to compel irrelevant discovery.
08/02/02	Theresa L. Groh	14.0	Research, draft and revise Reply Memorandum in Support of Plaintiffs' Motion for Judgment; Plaintiffs' Motion to Compel	Nonrecoverable time for motion to compel irrelevant discovery; duplicative/excessive billing time for tasks; block billing.

08/03/02	Theresa L. Groh	12.0	Research, draft and revise Reply Memorandum in Support of Plaintiffs' Motion for Judgment; Plaintiffs' Motion to Compel	Nonrecoverable time for motion to compel irrelevant discovery; duplicative/excessive billing time for tasks; block billing.
08/03/02	John C. Murdock	7.50	Research/analysis for draft of Reply Memorandum in Support of Class Certification	
08/04/02	Theresa L. Groh	12.0	Research, draft and revise Reply Memorandum in Support of Plaintiffs' Motion for Judgment; Plaintiffs' Motion to Compel	Nonrecoverable time for motion to compel irrelevant discovery; duplicative/excessive billing time for tasks; block billing.
08/04/02	John C. Murdock	5.75	Research and assisting in drafting Reply Memorandum in Support of Plaintiffs' Motion for Judgment; research and draft Reply Memorandum in Support of Class Certification	
08/06/02	Theresa L. Groh	13.0	Research, draft and revise Reply Memorandum in Support of Plaintiffs' Motion for Judgment, Plaintiffs' Motion to Compel	Nonrecoverable time for motion to compel irrelevant discovery; duplicative/excessive billing time for tasks; block billing.
08/06/02	Stephanie Vaaler	1.50	Pull cases off LEXIS	Vague – insufficient description of task
08/06/02	John C. Murdock	7.25	Research and draft Reply Memorandum in Support of Class Certification	
08/07/02	Theresa L. Groh	10.0	Research, draft and revise Reply Memorandum in Support of Plaintiffs' Motion for Judgment, Plaintiffs' Motion to Compel; conference with J. Murdock re: Reply Memorandum in Support of Class Certification	Excessive/duplicative billing for conferences between attorneys; excessive/duplicative time billed for overlapping tasks; Block billing
08/07/02	John C. Murdock	12.0	Research and draft Reply Memorandum in Support of Class Certification; conference with T. Groh re: same	Excessive/duplicative billing for conferences between attorneys; vague – insufficient description of research; Block billing
08/07/02	Stephanie Vaaler	.50	Copy/prep Motion to Compel for filing; prepare exhibit tabs	Noncompensable clerical work.
08/08/02	John C. Murdock	10.25	Draft Reply in Support of Plaintiffs' Motion for Class Certification; conference with T. Groh; assist in edit/revision of Reply Memorandum in Support of Plaintiffs' Motion for Judgment;	Excessive/duplicative billing for conferences between attorneys; nonrecoverable time for motion to compel irrelevant discovery; Block

			Plaintiffs' Motion to Compel	billing
08/08/02	Theresa L. Groh	8.0	Research, draft and revise Reply Memorandum in Support of Plaintiffs' Motion for Judgment, Plaintiffs' Motion to Compel; conference with J. Murdock re: Reply Memorandum in Support of Class Certification	Excessive/duplicative billing for conferences between attorneys; nonrecoverable time for motion to compel irrelevant discovery; excessive/duplicative billing for overlapping tasks; Block billing
08/09/02	Theresa L. Groh	9.0	Letter to Roberts, Younger/McElligott; research, draft and revise Reply Memorandum in Support of Plaintiffs' Motion for Judgment, Plaintiffs' Motion to Compel; conference with J. Murdock re: Reply Memorandum in Support of Class Certification; phone conference with clients	Excessive/duplicative billing for conferences between attorneys and redundant/overlapping tasks; vague – no description of research conducted; Block billing
08/09/02	John C. Murdock	6.75	Draft/edit Reply in Support of Plaintiffs' Motion for Class Certification; draft Reply in Support of Motion to Compel re: Merits; conference with T. Groh	Excessive/duplicative billing for conferences between attorneys; unrecoverable time for motion to compel irrelevant discovery; Block billing
08/09/02	Stephanie Vaaler	4.0	Copy and tab exhibits; shepardize cases; pull cases; LEXIS; review record for citations; revise index to administrative record	Copying/tapping is clerical non-billable work.
08/12/02	Theresa L. Groh	1.0	Meeting with S. Vaaler; update clients re: status; letter to M. Wolf	Vague – no topic of meeting; no subject of letter to co-counsel; Block billing
08/12/02	Stephanie Vaaler	1.50	Meeting with T. Groh; update clients; draft correspondence to clients re: recent filings; copy enclosures; prepare mailing re: same	Vague – no topic of meeting; nonbillable clerical work; Block billing
08/13/02	Theresa L. Groh	.25	Review/edit S. Vaaler draft of correspondence to clients	
08/14/02	Stephanie Vaaler	.50	Revise letter to clients per T. Groh instructions; prepare mailing	Clerical non-billable work
09/04/02	Theresa L. Groh	.25	Meeting with S. Vaaler re: pleadings binder	
09/04/02	Stephanie Vaaler	2.0	Meeting with T. Groh re: pleadings binder; prepare pleadings binder	Duplicative/excessive billing for conferences; clerical nonbillable work
09/09/02	Stephanie Vaaler	.50	Meeting with J. Murdock re: binder; prepare binder	Duplicative/excessive billing for conferences; clerical nonbillable work

10/18/02	Theresa L. Groh	.50	Phone conference with clients	Vague – no topic of conference
11/25/02	Theresa L. Groh	3.0	Review Roberts letter with attached IP Motion to Supplement Motion for Judgment on Administrative Record; conference with J. Murdock; research	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference; no description of research conducted; Block billing
11/25/02	John C. Murdock	2.50	Review/analysis of IP Motion to Supplement Motion for Judgment on Administrative Record; conference with T. Groh	Excessive/duplicative billing for conferences between attorneys and for review of motion; Vague – no topic of conference; Block billing
11/27/02	Theresa L. Groh	3.0	Research and draft opposition to motion to supplement	Vague – no description of research conducted
12/02/02	Theresa L. Groh	3.0	Research and draft opposition to motion to supplement	Vague – no description of research conducted
12/03/02	John C. Murdock	2.0	Review and revise Opposition Supplement; conference with T. Groh	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference; Block billing
12/03/02	Theresa L. Groh	3.0	Conference with J. Murdock; finalize opposition to motion to supplement	Excessive/duplicative billing for conferences between attorneys and overlapping tasks; Vague – no topic of conference; Block billing
12/03/02	Stephanie Vaaler	1.0	USDC Court filing; Memorandum in Opposition; hand delivery to Michael Roberts	Clerical non-billable work
12/04/02	Theresa L. Groh	.75	Younger/McElligott correspondence; phone conference with clients	Vague – no subject of correspondence
01/07/03	Theresa L. Groh	.25	Email to SV re: file review	Clerical non-billable work
01/07/03	Stephanie Vaaler	.25	File review for letter to clients; Email to T. Groh re: same	Clerical non-billable work
01/09/03	Theresa L. Groh	.50	Phone conference with clients	Vague – no topic of conference;
01/28/03	Theresa L. Groh	.50	Draft letter to clients re: status	
01/29/03	Theresa L. Groh	.50	Revise letter to clients re: status	
02/05/03	Theresa L. Groh	6.50	Review Miraglia letter re: T. Groh attendance at A. Johnson depo.; draft letter to Miraglia and McElligott re: A. Johnson depo.; phone conference with defense counsel re: same;	Excessive/duplicative billing for conferences between internal attorneys; Vague – no topic of conferences; Block billing

			conference with J. Murdock; phone conference with Doggett; research re: same	
02/05/03	John C. Murdock	1.50	Draft and edit letter to McGuire Woods re: Johnson deposition; conference with T. Groh	Excessive/duplicative billing for conferences between internal attorneys and duplicative/overlapping tasks; Vague – no topic of conferences; Block billing
02/06/03	Theresa L. Groh	4.0	Prepare for and participation in conference with Court; conference with J. Murdock re: same	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference and no description of preparation; Block billing
02/06/03	John C. Murdock	3.0	Conference with T. Groh; prepare for and participate in Court conference	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference and no description of preparation; excessive/billing for attendance at conference by two partners; Block billing
02/07/03	Theresa L. Groh	.50	Phone conference with clients	Vague – no topic of conference
02/10/03	Theresa L. Groh	.50	Review Court Order re: Johnson depo	Excessive review time.
02/11/03	Theresa L. Groh	.25	Draft letter to Miraglia re: Johnson transcript	
03/18/03	Theresa L. Groh	3.0	Client letter (Order Granting Class Certification); review Court Order granting Plaintiffs' Motion for Class Certification and Motion for Judgment; conference with J. Murdock; phone conference with clients	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conferences; Block billing
03/18/03	John C. Murdock	2.50	Review/analysis of Court Order granting Plaintiffs' Motion for Class Certification and Motion for Judgment; conference with T. Groh	Excessive/duplicative billing for conferences between attorneys and for same tasks performed by two billing attorneys; Vague – no topic of conference; Block billing
03/19/03	Theresa L. Groh	.50	Phone conference with M. Wolf; review materials from M. Wolf	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference or materials reviewed

03/20/03	Theresa L. Groh	.50	Phone conference with clients	Vague – no topic of conference
03/21/03	Theresa L. Groh	.25	Review Amended Order	
03/24/03	Theresa L. Groh	.25	Phone conference with clients	Vague – no topic of conference
03/25/03	Theresa L. Groh	.50	Draft letter to Noonan and Dalesandro with enclosed lists	
03/26/03	Todd B. Naylor	8.0	Research re: Decision; draft and edit memo re: same	Vague – insufficient description of research and reason therefore
03/28/03	Stephanie Vaaler	.25	Review newspaper for article related to Decision	Noncompensable time
04/01/03	Theresa L. Groh	4.0	Research re: attorneys fees	
04/02/03	Theresa L. Groh	1.0	Phone conference with clients; conference with J. Murdock	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference; Block billing
04/02/03	John C. Murdock	.50	Conference with T. Groh	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference;
04/23/03	Theresa L. Groh	1.0	Review Miraglia letter with attached chart “Potential Severance Benefits”	
04/23/03	Todd B. Naylor	8.0	Research and memo re: prejudgment interest	
04/24/03	John C. Murdock	.25	Discussion with S. Vaaler re: damages project	
04/24/03	Stephanie Vaaler	1.0	Discussion with J. Murdock re: damages; calculate same	
04/24/03	Theresa L. Groh	2.0	Outline issues for Final Judgment Entry; phone conference with J. McElligott	
04/29/03	Theresa L. Groh	.50	Phone conference with clients	Vague – no topic of conference;
05/12/03	John C. Murdock	7.25	Research into class notice issues in preparation to draft final notice	
05/13/03	John C. Murdock	7.25	Draft/edit proposed notice; research into proposed class certification judgment language	
05/15/03	Theresa L. Groh	5.0	Draft outline of Motion for Final Judgment Entry; draft Notice Concerning Rights	
05/16/03	John C. Murdock	2.50	Draft/edit Younger letter re: Final Judgment Entry	
05/19/03	Theresa L. Groh	1.50	Phone conference with J. McElligott and C. Younger; phone conference with clients	Vague – no topic of conferences;
05/19/03	John C. Murdock	8.75	Draft, edit and research re: proposed entry language for Court Rule 23(b)(2) certification;	Excessive billing time for task; Block billing; insufficient description of

			conference with T. Groh re: same; draft correspondence to opposing counsel; prepare for conference with opposing counsel	preparation for conference
05/21/03	Theresa L. Groh	2.0	Conference with J. Murdock re: proposed entry language for court for Rule 23(b)(2) certification; review J. Murdock letter to Younger with attached proposed entry language	Excessive billing time for conference and review of letter.
05/22/03	Theresa L. Groh	7.50	Conference with J. Murdock re: judgment issues and settlement; phone conference with opposing counsel; research fees and interest issues	Excessive/duplicative billing for conferences between internal attorneys; Block billing
05/22/03	John C. Murdock	4.0	Conference with T. Groh re: judgment issues and settlement; preparation for phone conference; phone conference re: final judgment with opposing counsel with follow-up	Excessive/duplicative billing for conferences between internal attorneys; insufficient explanation of preparation for conference; excessive /duplicative billing for same tasks for two attorneys; Block billing
05/23/03	Theresa L. Groh	.75	Draft McElligott letter outlining outcome of phone conference and assigned responsibilities	
05/30/03	Theresa L. Groh	2.0	Prepare for phone conference with defense counsel re: outstanding issues for final judgment entry; conference with J. Murdock; phone conference with McElligott re: final judgment issues	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference with J. Murdock; no description of preparation for conference; Block billing
05/30/03	John C. Murdock	2.50	Prepare for phone conference with defense counsel re: outstanding issues for final judgment entry; conference with T. Groh	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference with T. Groh; unnecessary duplication of tasks by two partners; no description of preparation for conference; Block billing
06/12/03	Theresa L. Groh	.50	Phone conference with clients	Vague – no topic of conference
06/20/03	Theresa L. Groh	2.0	Prepare for phone conference; phone conference with Judge Beckwith re: Final Judgment Entry and briefing schedule	Vague – no explanation of preparation; Block billing
06/20/03	John C. Murdock	5.25	Prepare for phone conference; phone conference with Judge Beckwith re: Final Judgment Entry	Vague – no explanation of preparation; unnecessary duplication

			and briefing schedule; detailed review of IP proposed notice and draft Exhibit A for notice	of tasks by two partners; Block billing
06/30/03	Theresa L. Groh	.50	Meet with C. Pence and S. Vaaler re: fee application	
06/30/03	Stephanie Vaaler	3.50	Meeting with T. Groh and C. Pence re: motion for attorney fees; meeting with C. Pence re: same; preparation and review of hours in preparation for motion for attorney fees	Block billing
07/01/03	Stephanie Vaaler	5.75	Preparation and review of hours in preparation for motion for attorney fees	
07/02/03	Theresa L. Groh	2.0	Revised Notice; conference with J. Murdock; letter to M. Wolf	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference; Block billing
07/02/03	John C. Murdock	2.25	Draft Proposed Notice; conference with T. Groh	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference; Block billing
07/02/03	Stephanie Vaaler	6.0	Preparation and review of hours in preparation for motion for attorney fees	
07/03/03	Stephanie Vaaler	6.0	Preparation and review of hours in preparation for motion for attorney fees; retrieved transcript from court reporter	
07/07/03	John C. Murdock	3.50	Draft, revise and finalize Proposed Notice; conference with T. Groh; draft correspondence to James McElligott enclosing final Class Notice and Exhibit A's as proposed by Plaintiffs	Excessive/duplicative billing for conferences between attorneys; excessive billing time for drafting of notice; Vague – no topic of conference; Block billing
07/07/03	Theresa L. Groh	2.0	Review Proposed Notice submitted to Court; conference with J. Murdock	Excessive/duplicative billing for conferences between attorneys; redundant/excessive billing time for review of proposed notice; Vague – no topic of conference; Block billing
07/07/03	Stephanie Vaaler	6.25	Preparation and review of hours in preparation for motion for attorney fees	
07/08/03	John C. Murdock	6.75	Draft, revise and finalize Proposed Notice	Excessive/duplicative billing for

			submission to the Court; review Defendant's submission of Proposed Notice; conference with T. Groh; phone conference with Mike Roberts re: Proposed Notice filings	conferences between attorneys; Vague – no topic of conference with T. Groh; excessive/duplicative billing time for drafting/finalizing of notice on July 7, 2003; Block billing
07/08/03	Theresa L. Groh	2.0	Review Proposed Notice submitted to Court; conference with J. Murdock	Duplicate/redundant/excessive billing entry same as July 7, 2003 entry; Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference; Block billing
07/08/03	Stephanie Vaaler	3.75	Travel to Sixth Circuit Law Library to pull/copy ALR case; reviewed file for current addresses of IP employees; phone conference with Don Trusty re: skip tracing services; online research re: same	Noncompensable travel time; Block billing
07/09/03	John C. Murdock	3.50	Conference with T. Groh; cross-check International Paper's Exhibit A's to be served with Proposed Class Notice; draft correspondence to Jay McElligott re: same; conference with S. Vaaler re: notice project	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference with T. Groh; Block billing
07/09/03	Theresa L. Groh	9.0	Review Defendant's submission of Proposed Notice; conference with J. Murdock; research attorney fees, interest and final judgment entry issues	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference; excessive billing time for attorneys' fees research and petition; Block billing
07/09/03	Stephanie Vaaler	4.0	Meeting with J. Murdock re: notice project; phone conferences with locator services; reviewed Plaintiffs' submission of proposed class action notice and prepared outline re: notice projects; reviewed and cross-checked proposed Exhibit A's against chart re: benefits	Block billing; duplicative billing for conferences.
07/10/03	Theresa L. Groh	10.0	Phone conference with clients; research attorney fees, interest and final judgment entry issues	Vague – no topic of conference; Block billing.
07/10/03	Stephanie Vaaler	6.50	Preparation of tracking chart re: status of notice; E-mail to C. Pence re: McElligott letter	Excessive, unnecessary billing time.

07/11/03	Theresa L. Groh	10.0	Review time entries and prepare application for attorney fees	
07/14/03	Theresa L. Groh	11.50	Review time entries and prepare application for attorney fees; research fee issues; conference with S. Vaaler	Vague – no topic of conference; excessive billing time for fee application and research; Block billing
07/14/03	Stephanie Vaaler	2.0	Edit outline re: notice; phone conference with locator services; discussion with T. Groh re: same; reviewed Banks files re: notice	Excessive/duplicative billing time for conferences; Block billing
07/15/03	Theresa L. Groh	12.0	Review time entries and prepare application for attorney fees; research fee issues	Excessive billing time for fee application and research; Block billing
07/15/03	Stephanie Vaaler	5.25	Prepare attachments to notice; review demos of various online database systems; review pricing list re: same; phone conferences with services re: pricing; performed address searches; E-mails to database providers	Block billing
07/16/03	Stephanie Vaaler	1.0	Research; locator services	
07/18/03	Theresa L. Groh	.50	Phone conference with clients	Vague – no topic of conference
07/21/03	Theresa L. Groh	13.0	Research attorney fees, interest and final judgment entry issues; review of International Paper Retirement Plan #001	Excessive billing time for fee application and research; Block billing
07/22/03	Theresa L. Groh	1.0	Phone conference with M. Wolf; research fee issues; conference with J. Murdock re: International Paper Retirement Plan #001	Excessive/duplicative billing for conferences between attorneys; Vague – no topic of conference with M. Wolf; Block billing
07/22/03	John C. Murdock	6.50	Conference with S. Vaaler re: discrepancies in analysis of International Paper's proposed Exhibit A's for Class Notice when cross-checked against earlier discovery produced by International Paper regarding the identification of class members; detailed review of International Paper Retirement Plan #001 for verification of International Paper representations regarding Flex Six for Notice; conference with T. Groh regarding same	Excessive/duplicative billing for conferences; duplication of tasks by billing partners; Block billing
07/22/03	Stephanie Vaaler	2.50	Review T. Groh e-mail re: class member address; e-mail to class member; updated address chart; phone conference with Locate Plus; file review;	Block billing

			omitted names of IP employees; meeting with J. Murdock re: same	
07/23/03	John C. Murdock	2.25	Draft/edit/review correspondence to James McElligott concerning International Paper's failure to address issues regarding missing Exhibit A's for Class Notice (based upon prior July 10, 2003 correspondence to International Paper); conference with S. Vaaler re: Exhibit A cross-check issues	Block billing
07/23/03	Stephanie Vaaler	.50	Travel to Freking & Betz to obtain package of materials; conference with J. Murdock re: Exhibit A	Noncompensable/unnecessary travel/clerical time; excessive/duplicative billing for conferences
07/24/03	Theresa L. Groh	8.0	Phone conference with clients; research attorney fees, interest and final judgment entry issues	Vague – no topic of conference; Excessive billing time for fee application and research; Block billing
07/25/03	Theresa L. Groh	10.0	Research and draft Motion for Entry of Judgment and for fees, interest and costs; review time entries re: same	Excessive billing time for fee application and research
07/28/03	Stephanie Vaaler	2.0	Telephone conference with class member and e-mail re: status; e-mail to T. Groh re: same; copied notice enclosure; phone conference with First Data re: agreement; proof notice list against mailing list with C. Pence	Nonbillable clerical time; Block billing
07/30/03	Theresa L. Groh	9.0	Phone conference with witnesses re: Declarations; conferences with S. Vaaler re: package for witnesses; draft Declarations; conference with J. Murdock re: same; review time entries; research attorney fees	Excessive billing time for fee application and research; excessive/duplicative time for conferences; Block billing
07/30/03	Stephanie Vaaler	2.75	Edit chart re: status of class notice; research re: previous efforts to exercise due diligence re: notice; phone conversations/e-mail with database services re: due diligence issue	Block billing
07/31/03	Theresa L. Groh	11.50	Phone conference with witnesses re: Declarations; phone conferences with M. Wolf; conference with J. Murdock re: motion and	Excessive billing time for fee application and research; excessive/duplicative time for attorney

			research; revise Declarations; research fees and interest	conferences; Block billing
07/31/03	Stephanie Vaaler	2.0	Drafted letter to Rick Wayne; prepared enclosures	Excessive billing time for fee application and research

#385107

Exhibit 7

Service: **Get by LEXSEE®**
Citation: **1997 us app lexis 17205**

*1997 U.S. App. LEXIS 17205, **

HOYTE R. BLACK, SR., Individually and as Administrator for the Estate of Dorothy M. Black,
Deceased, Plaintiff-Appellant, v. LOJAC ENTERPRISES, INC., Defendant-Appellee.

NO. 96-5654

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

1997 U.S. App. LEXIS 17205

July 2, 1997, FILED

NOTICE: [*1] NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

SUBSEQUENT HISTORY: Reported in Table Case Format at: 117 F.3d 1420, 1997 U.S. App. LEXIS 24098.

PRIOR HISTORY: On Appeal from the United States District Court for the Middle District of Tennessee. 91-01043. Echols. 4-2-96.

DISPOSITION: AFFIRMED.

CASE SUMMARY


PROCEDURAL POSTURE: Plaintiff employee, individually and as administer of deceased's estate, appealed the order of the United States District Court for the Middle District of Tennessee, which awarded only a portion of the attorney's fees sought by the employee as the prevailing party in his employment discrimination action. The deceased's claim, under the Employee Retirement Income Security Act had been bifurcated and was voluntarily dismissed without prejudice.


OVERVIEW: Because the attorney's fee application and documentation was "woefully inadequate," the district court required the employee to provide a more detailed accounting before it rendered an award. The employee contested the district court's failure to state a lodestar figure and in making various deductions. The court affirmed the district court's judgment. The court found, inter alia, that (1) where the calculations of the fee award were on sound legal ground, such that they were based on the lodestar and specific deductions, there was no need to require the actual figures to be set out; (2) it was proper to deduct amounts for documented time entries that failed to even identify the general subject matter involved; (3) the employee was not a prevailing party on the ERISA claim, such that no fee was awarded, because the claim was voluntarily dismissed and it was not the employee's claim; (4) it was proper to deny fees for the "shoddy nature" of the first application; (5) fees for efforts that were unfounded were properly denied; and (6) it was proper to reduce the fee award on the basis of the employee's limited success where the employer was found not to have "willfully discriminated."



OUTCOME: The court affirmed the district court's judgment, which awarded only a portion of the attorney's fees sought by the employee as the prevailing party in his employment discrimination action against the employer.


CORE TERMS: age discrimination, spent, time spent, documentation, calculation, prevailing party, expended, motion to compel, new trial, additur, fee award, lodestar, reasonableness, amount claimed, fee-shifting, excluding, abuse of discretion, properly denied, amounts claimed, amount of time, post-trial, general subject, hourly rate, arriving, clerk, reasonable fee, jury verdict, fee request, proportionality, quantification





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[Civil Procedure](#) > [Appeals](#) > [Standards of Review](#) > [Standards Generally](#) 






HN1  Analytical guidelines govern a determination of attorney's fees under prevailing party fee-shifting provisions, generally including that of 29 U.S.C.S. § 216(b) of the Fair Labor Standards Act. Under § 216(b), incorporated into the age discrimination context by 29 U.S.C.S. § 626(b) of the Age Discrimination in Employment Act, 29 U.S.C.S. §§ 621-634, attorney's fees are mandatory but in an amount to be determined by the district court. Such a determination is within the sound discretion of the district court although it is required to provide a concise but clear explanation for the award. The appellate court's review of the application of the analytical guideline analysis is for abuse of discretion. [More Like This Headnote](#)


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HN2  The starting point in determining a reasonable attorney's fee award is the calculation of the "lodestar," that is, the number of hours reasonably expended on the litigation as a whole multiplied by a reasonable hourly rate. [More Like This Headnote](#)


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HN3  Where the attorney fee award calculations of the district court are on sound legal ground, the appellate court can discern no useful purpose in requiring the actual figures to be set out. [More Like This Headnote](#)

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HN4  Under the system of three-tier review applicable when reviewing a determination on the reasonableness of hours requested, we review the district court's decision as to the adequacy of documentation for clear error. The party seeking the fee award bears the burden of supplying the district court with adequate documentation. The


fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. [More Like This Headnote](#)


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HN5  The appellate court reviews de novo whether the district court erred in excluding time from an attorney's fee award because the time was unrelated to the claims on which the party prevailed. [More Like This Headnote](#)


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HN6  The attorney's fee provision, 29 U.S.C.S. § 216(b) of the Fair Labor Standards Act, provides: The court shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. 29 U.S.C.S. § 216(b). [More Like This Headnote](#)


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HN7  Time spent preparing an application for attorney's fees is normally recoverable. [More Like This Headnote](#)

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HN8  Additur is forbidden in federal court as an increase by the court of something never in the verdict. [More Like This Headnote](#)

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[Civil Procedure](#) > [Relief From Judgment](#) > [Additurs & Remittiturs](#) 


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HN9  Where the district court correctly finds the post-trial motions to be unfounded efforts to enhance a low damage award, attorney fees for such services are properly denied. [More Like This Headnote](#)


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HN10  Recovery for the additional time spent on appeal may be had where the appellant prevailing party is successful in his assignments of error on appeal. [More Like This Headnote](#)

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HN11  Although it is true that there is no strict rule of proportionality, a district court is vested with broad discretion to reduce an attorney's fee award based upon the "results obtained" by the prevailing party. There is no precise rule or formula for

making these determinations. The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment. [More Like This Headnote](#)

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HN12  The amount of the attorney's fee award must be determined on the facts of each case. [More Like This Headnote](#)

COUNSEL: For HOYT R. BLACK, SR., individually and as Administrator for the Estate of Dorothy M. Black, Plaintiff - Appellant: M. Reid Estes, Jr., David P. Canas, Stewart, Estes & Donnell, Nashville, TN.

For LOJAC ENTERPRISES, INCORPORATED, Defendant - Appellee: John P. Branham, Donald Capparella, Branham & Day, Nashville, TN.

JUDGES: Before: SILER and COLE, Circuit Judges; HOOD, District Judge. *

* The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

OPINIONBY: JOSEPH M. HOOD

OPINION: JOSEPH M. HOOD, District Judge. In this employment discrimination action, the plaintiff-appellant, Hoyte R. Black, appeals the decision of the district court awarding only a portion **[*2]** of the attorney's fees Black sought under the applicable fee-shifting provisions. Black claims that the district court erred in failing to state a lodestar figure and in making various deductions from that unstated figure in arriving at Black's fee award. We affirm.

I.

Hoyte R. Black was a heavy equipment mechanic for Lojac Enterprises, Inc., beginning his employment in March of 1986. In December of 1990, Lojac instituted a seasonal layoff leaving Black and many other employees without work. In time, a "substantially younger" employee whom Black had been training was recalled to work while Black was not.

Claiming unlawful age discrimination, Black filed this action against Lojac pursuant to the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621-34, and the Tennessee Human Rights Act (THRA), Tenn Code Ann. §§ 4-21-101 to 4-21-903. Black's wife, Dorothy M. Black, joined in the action claiming violations of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461, in that her husband had allegedly been discharged in order to deprive them of medical benefits under the company plan.

After four years of pre-trial litigation, Black's age discrimination **[*3]** claims were tried to a jury. Upon Black's motions, the ERISA claim had been bifurcated and was eventually voluntarily dismissed without prejudice. As to the age discrimination claims, the jury found that age was a determining factor in Lojac's decision to not recall Black and awarded him \$ 16,000 in damages, excluding front pay. Even so, the jury concluded that Lojac had not "willfully discriminated" against Black because of his age. Neither Black nor Lojac appealed this judgment.

Following the jury verdict, Black moved the district court to amend the judgment by additur or, in the alternative, to grant a new trial on the issue of damages only. The district court summarily denied the motion to amend judgment by additur in light of the broad rule of *Dimick v. Schiedt*, 293 U.S. 474, 486-87, 79 L. Ed. 603, 55 S. Ct. 296 (1935). Finding no error and, moreover, no prejudice in the trial proceedings, the district court also denied the motion for a new trial.

As a prevailing party, Black filed a bill of costs with the clerk of court along with supporting documentation claiming \$ 7,407.48. Lojac filed objections to the bill of costs. Of the amount claimed, the clerk of court taxed [*4] \$ 3,778.05 against Lojac.

Pursuant to the fee-shifting provisions of the ADEA, 29 U.S.C. § 216(b), and the THRA, Tenn. Code Ann. § 4-21-306(a)(7), Black filed an application for attorney's fees in the amount of \$ 181,022.75. Accompanying his application, Black filed affidavits summarizing the services counsel had provided and in support of the reasonableness of the fee request. Lojac objected to the fees claimed maintaining that there was insufficient explanation for the amount of time Black's counsel claimed to have spent on the case. In response, Black filed a motion to compel Lojac to disclose statements of its own counsel's services arguing that this would serve as a useful benchmark to show the fees claimed were in fact reasonable.

The district court was less than satisfied with Black's attorney's fees application. Finding the documentation presented to be "woefully inadequate," ruling on the question was reserved until Black provided a more detailed account of the time counsel had spent on the matter. The court noted that Black had provided no explanation of his services in his application for fees; rather, Black's counsel had merely totaled the number of hours spent on the [*5] case by attorneys, paralegals, and runners from 1991 to 1995. Further, the court denied Black's motion to compel production of Lojac's statement of services stating that Lojac should not be required to produce "the very sort of information which Plaintiff's counsel neglected to provide this court [in support of his application for fees]." J.A. at 334.

In an effort to have his fee application considered and to remedy the documentary lacuna, Black filed under seal, and later provided to Lojac, a more detailed statement of services. Besides more detail, Black increased the amount sought from \$ 181,022.75 to \$ 193,282.34.

After examining the revised statement of services, the district court awarded Black \$ 25,424.12. In arriving at this sum, the district court made it clear that it was beginning the analysis with the lodestar, multiplying the number of hours expended by the hourly rate. It then subtracted for the following: (1) the time for which there was inadequate documentation; (2) the time spent working on the ERISA claim; (3) the time spent working on the initial attorney's fees application; (4) the time spent working on Black's motion for additur and the motion for a new trial [*6] on damages; and (5) costs already awarded by the clerk of court. Finally, the court further reduced the resulting figure to take account of limited success achieved in the litigation. Black filed a timely notice of appeal.

II.

In *Hensley v. Eckerhart*, 461 U.S. 424, 433 n.7, 76 L. Ed. 2d 40, 103 S. Ct. 1933 (1983), the Court set forth ^{HNI} analytical guidelines which govern a determination of attorney's fees under prevailing party fee-shifting provisions generally including that of the Fair Labor Standards Act, 29 U.S.C. § 216(b). See also, *United Slate, Tile and Composition Roofers v. G & M Roofing and Sheet Metal Co., Inc.*, 732 F.2d 495, 502 (6th Cir. 1984). Under § 216(b), incorporated into the age discrimination context by § 626(b), attorney's fees are mandatory but in an amount to be determined by the district court. *United Slate*, 732 F.2d at 501. Such a determination is within the sound discretion of the district court although it is required to provide a "concise but clear explanation" for the award. *Hensley*, 461 U.S. at 437. Our review of the application of the *Hensley* analysis is for abuse of discretion. *Wayne v. Village of*

Sebring, 36 F.3d [*7] 517, 531-32 (6th Cir. 1994) (citation omitted).

As pointed out by the district court,^{HN2} the starting point in determining a reasonable fee award is the calculation of the "lodestar," that is, "the number of hours reasonably expended on the litigation [as a whole] multiplied by a reasonable hourly rate." *Wayne*, 36 F.3d at 531. Black rightly has no dispute with this fundamental principle. Rather, Black contends the district court abused its discretion by failing to specifically state its mathematical calculations for the lodestar or the specific figures it subtracted for each deduction. In other words, the district court made it clear that its calculations were based on the lodestar and specific deductions but did not state the quantification of its calculations.

Although quantification would be helpful in the review process, we find no abuse of discretion on the part of the district court in not specifically setting forth the figures. In this case, the lodestar figure clearly served as the jumping off point and animated the calculations throughout. The district court began with the amount claimed by Black, \$ 193,282.84, and then proceeded to throw out those hours for which Black [*8] had provided inadequate documentation.

After deducting for inadequate documentation, the district court proceeded to take enumerated deductions for the amounts attributable to the ERISA claim, the amounts claimed for the initial fee application, the motion to compel and the post-trial motions, finally arriving at, in the district court's own words, the "hours properly included in the 'reasonable fee' amount." J.A. at 33. By this route, the district court ultimately arrived at the lodestar, operating on the unstated assumption that the rates claimed were reasonable. n1 Even though the math is not found on the face of the memorandum opinion, the district court closely adhered to the *Hensley* analysis and provided "concise but clear explanation[s] of its reasons." *Hensley*, 461 U.S. at 437. In that^{HN3} the calculations of the district court were on sound legal ground, as discussed below, we can discern no useful purpose in requiring the actual figures to be set out.

- - - - - Footnotes - - - - -

n1 On the whole, the prevailing hourly rates were not seriously in dispute. In fact, the practitioner's affidavit submitted by Lojac set the range of rates for an attorney with more than five years experience between \$ 150 and \$ 250 and less than five years experience between \$ 90 and \$ 120. J.A. at 393. Black claimed a uniform rate of \$ 175 for his attorneys. J.A. at 251.

- - - - - End Footnotes - - - - - [*9]

III.

Black also takes issue with each of the four specific deductions made by the district court. n2 Each shall be addressed in turn.

- - - - - Footnotes - - - - -

n2 To prevent double counting, the district court also reduced the amount claimed to take account for the costs already taxed against Lojac. Black assigns no error for this deduction.

----- End Footnotes----- **A. Inadequate Documentation**

HN4 Under the system of three-tier review applicable when reviewing a determination on the reasonableness of hours requested, we review the district court's decision as to the adequacy of documentation for clear error. *Wooldridge v. Marlene Industries Corp.*, 898 F.2d 1169, 1176 (6th Cir. 1990). Black, as the party seeking the fee award, bore the burden of supplying the district court with adequate documentation. *Hensley*, 461 U.S. at 437 ("The fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.").

The district court noted that many of the time entries failed to even **[*10]** identify the general subject matter involved, documented with such vague descriptions as "research," "pick-up," "revised form," and "office conference." For example, on March 11, 1992, Black claimed 6.00 hours for research and review of file. J.A. at 605. It is simply impossible to discern whether this research, for which Black claimed \$ 1,050, was directed at, say, the age discrimination claims for which Black was a prevailing party or the ERISA claims for which he was not.

Thus, such entries clearly provide little guidance in ascertaining the purpose of the work during the time claimed and do not merit an award. *Hensley*, 461 U.S. at 437 n.12 ("Plaintiff's counsel, of course, is not required to record in great detail how each minute of his time was expended. But at least counsel should identify the general subject matter of his time expenditures."). Given the apparent paucity of these explanations and having already given Black a second opportunity to provide the necessary documentation, the district court did not commit clear error in deducting for this failing.

B. Amount Claimed on the ERISA Claim

HN5 We review de novo whether the district court erred in excluding time **[*11]** from an attorney's fee award because the time was unrelated to the claims on which the party prevailed. *Wooldridge*, 898 F.2d at 1176. Here, the district court held, in essence, that there was no prevailing party on the ERISA claim. In this respect, Black claims that as administrator of his wife's estate, pursuing her ERISA claim against Lojac, he was pursuing claims which were so closely tied to his age discrimination claims that he is entitled to attorney's fees attributable to the ERISA claim as well.

Although Black in his individual capacity prevailed on his age discrimination claims, Black in his capacity as administrator of his wife's estate did not prevail on her ERISA claim. **HN6** The attorney's fee provision itself provides, "The court . . . shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." 29 U.S.C. § 216(b). His wife's estate, as the actual claimant, did not obtain a judgment against Lojac or otherwise prevail on the ERISA claim. *Farrar v. Hobby*, 506 U.S. 103, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992). In point of fact, the bifurcated ERISA claim was voluntarily **[*12]** dismissed by Black following trial of his age discrimination claims. That Black was proceeding both on his own behalf and on behalf of his wife does not thereby bring the disparate claims into commonality. *Hensley*, 461 U.S. at 435 (stating that unrelated claims must be treated as if they were tried separately and no fees may be awarded for the unsuccessful claim). The district court thus properly deducted those fees sought for the ERISA claim.

C. Initial Fee Application, Motion to Compel, and Post-trial Motions

Black contends that the district court erred in excluding from his award the amounts claimed for work on the initial attorney's fee application. Although **HN7** time spent preparing an application for attorney's fees is normally recoverable, *Peppers v. Barry*, 718 F. Supp. 23

(N.D. Ohio 1989), the district court found the initial application to be "woefully insufficient" in that Black merely totaled the number of hours spent from 1991 to 1995 and requested fees in the amount of \$ 181,022.75. J.A. at 32.

Having reviewed the initial application, we conclude that the district court did not err in excluding this time. *Wooldridge*, 898 F.2d at 1176. In terms of establishing [*13] the prevailing hourly rate for the Nashville area, the application was adequate. The fatal shortcoming, however, was in Exhibits 1, 2 and 3. J.A. at 254-56. Providing nothing more than a global summary of the amounts claimed, these three one-page documents shed no light whatsoever on what the general subject matter of the time expenditures was. *Hensley*, 461 U.S. at 437 n.12. Under these circumstances, the district court properly denied fees for the "shoddy nature" of the first application.

Likewise, the district court properly denied fees for Black's motion to compel the production of Lojac's billing statements. Undoubtedly, where the issue of the reasonableness of the time expended is fully joined, the amount of time spent by the opposing party is a relevant benchmark as to the amount of time reasonably required. *Mitroff v. Xomox Corp.*, 631 F. Supp. 25, 28 (S.D. Ohio 1985). In the matter at bar, however, the motion to compel was entirely unreasonable at that time given that Black had simply failed to provide Lojac or the district court with the means by which to make an informed assessment of the reasonableness of the time claimed. A global summary reveals very little. Black's [*14] efforts would have been more productively directed to adequately documenting his own fee request. The time spent on the motion to compel being unreasonably expended, no corresponding fees were in order. *Hensley*, 461 U.S. at 434.

Finally, the time spent on the post-trial motions suffers from the same problem. Black's motion for additur was not time reasonably spent because the rule of *Dimick*, 293 U.S. at 482, ^{HN8} forbids additur in federal court as an increase by the court of something never in the verdict. Similarly, the time spent on the motion for a new trial on damages was not reasonably spent in that there was no showing that the alleged errors were prejudicial or that failure to grant a new trial would deprive Black of substantial justice. Indeed, the district court concluded that the sole reason for the motions was Black's dissatisfaction with the \$ 16,000 jury verdict. J.A. at 33. Simply put, ^{HN9} the district court correctly found the post-trial motions to be unfounded "efforts to enhance a low damage award." J.A. at 33. Fees for such services were properly denied.

D. The Appeal

^{HN10} Recovery for the additional time spent on appeal may be had where the appellant prevailing [*15] party is successful in his assignments of error on appeal. *Cf. Fegley v. Higgins*, 19 F.3d 1126, 1135 (6th Cir. 1994). Given our disposition of this appeal, we conclude that the additional time spent on the appeal phase of the litigation was not time reasonably expended and thus does not merit a fee award. *Hensley*, 461 U.S. at 434. A request for attorney's fees should not result in "second major litigation" as here. *Hensley*, 461 U.S. at 437.

IV.

In challenging the district court's reduction of attorney's fees for Black's limited success, Black contends that the district court erroneously overemphasized the results obtained without considering factors such as the time required because of defense counsel's litigation tactics. Citing the public policy rationale underlying the fee-shifting provisions, Black maintains the district court erred.

^{HN11} Although it is true that there is no strict rule of proportionality, *Wooldridge*, 898 F.2d at

1177 (citing *City of Riverside v. Rivera*, 477 U.S. 561, 91 L. Ed. 2d 466, 106 S. Ct. 2686 (1986)), a district court is vested with broad discretion to reduce a fee award based upon the "results obtained" by the prevailing party. [*16] *Hensley*, 461 U.S. at 434-37. As the Court has stated,

There is no precise rule or formula for making these determinations. The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment

Hensley, 461 U.S. at 436-37.

In its opinion, the district court acknowledged that "placing too great an emphasis on the actual verdict amount would discourage attorneys from taking cases involving low damages but significant statutory violations" J.A. at 28. It is clear that the district court's equitable judgment was guided not by a strict rule of proportionality but by the fact that Black obtained limited success. Specifically, the jury found that Lojac had not "willfully discriminated" against Black and Black did not achieve the full relief sought as the jury awarded back pay only, comprising the entire verdict of \$ 16,000. The district court acted well within its discretion in reducing the award on this basis.

V.

In light of the principle that ^{HN127}"the amount of the fee, of course, must be determined [*17] on the facts of each case," the district court here acted well within its discretion in this fee dispute which was fast becoming, in essence, a round of "second major litigation." *Hensley*, 461 U.S. at 429, 437. There was no abuse of discretion in the district court's adherence to the *Hensley* analysis without specifically stating the figures behind its legally sound reasoning. All of the deductions were proper and there was substantial justification for the reduction of the award to take account of the limited success achieved. Accordingly, we **AFFIRM**.






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